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EVIDENCE BASED POLICY RESEARCH PROJECT

20 CASE STUDIES

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Matthew Lesh, Research Fellow

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About the author

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

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Introduction

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.¹ 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*.² 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.³ 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 clear establishment of the facts, identifying alternative policy options (including maintaining the status quo), weighing the pros and cons both quantitatively and qualitatively, and an open consultation with the public and stakeholders - all before the policy decision is finalised or legislation is developed. Subsequently, the decision would be communicated clearly with ample planning for implementation and review of the policy.

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

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

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

A failure of process

There is substantial evidence that decisions are being made on an ad hoc basis, responding to immediate political concerns without the full analysis of alternatives, potential implications and consideration of implementation strategies and a policy design framework. As the Institute of Public Administration Australia's Public Policy Drift paper found, 'there is pressure for senior politicians in governments and oppositions to make decisions quickly and confidently in order to appear decisive, pander to populist ideas to appear responsive, manufacture wedge issues to distinguish themselves from their opponents, and to put a spin on everything to exaggerate its significance.'⁴ 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.⁵

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'.⁶ 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 record levels of political discontent and loss of faith in democracy and key institutions.⁷ A recent ANUpoll survey of 2,513 people in 2017 found that more Australians are dissatisfied than satisfied with the way the country is heading, for the first time since the ANUpoll commenced in 2008.⁸

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

5 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.

6 <http://www.ipaa.org.au/documents/2013/11/2013-garran-oration.pdf/>

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

8 http://csr.m.cass.anu.edu.au/sites/default/files/docs/2018/7/ANUPoll_25_JobSecurity-thefutureofwork-Australianworkersviews.pdf

Analysis

The Institute of Public Affairs has undertaken analysis of 20 public policies using the ten criteria of the Wiltshire test for good policy-making. This research project was commissioned 'to coax more evidence-based policy decisions by all tiers of Government by reviewing and rating 20 high profile government decisions against the Wiltshire business case criteria' shown below:

Wiltshire Test: Ten Criteria for Public Policy Business Case

1. **Establish Need:** Identify a demonstrable need for the policy, based on hard evidence and consultation with all the stakeholders involved, particularly interest groups who will be affected. ('Hard evidence' in this context means both quantifying tangible and intangible knowledge, for instance the actual condition of a road as well as people's view of that condition so as to identify any perception gaps).
2. **Set Objectives:** Outline the public interest parameters of the proposed policy and clearly establish its objectives. For example, interpreting public interest as 'the greatest good for the greatest number' or 'helping those who can't help themselves'.
3. **Identify Options:** Identify alternative approaches to the design of the policy, preferably with international comparisons where feasible. Engage in realistic costings of 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 process.
9. **Introduce Legislation:** Develop Legislation and allow for comprehensive parliamentary debate especially in committee, and also intergovernmental discussion where necessary.
10. **Communicative Decision:** Design and implement a clear, simple and inexpensive communication strategy based on information not propaganda, regarding the new policy initiative.

Each case study was analysed and rated on whether it complied with good policy making processes (as defined by the Wiltshire criteria), not on whether it achieved its intended social, economic or environmental outcomes, many of which may not yet be known. This analysis has found that both state and federal governments are failing to apply best practice in the development of public policy.

Just eight of the 20 policies assessed were assessed to have met a majority of the Wiltshire Criteria. The other twelve policies failed the test. No policy was found to have met all ten criteria. Three policies, criminal justice reforms in New South Wales, the legalisation of Uber in Queensland and voluntary assisted dying in Victoria, were found to have met nine criteria.

The most common failures to apply the best practice policy making process related to cost-benefit analysis – a basic tenant of good policymaking but rare in Australia – followed by a failure to produce a green and then a white paper or outline a policy design framework. This was followed by a failure to undertake further consultation, outline alternatives, or a legislate with parliamentary debate.

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

- Electoral reform bill
- Future Submarine Program
- National Energy Guarantee
- NSW: Abolition of greyhound racing
- NSW: Criminal justice reforms
- QLD: Legalising Uber
- VIC: Access to medicinal cannabis
- VIC: Voluntary assisted dying

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.

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

- Abolition and replacement of the 457 Visa
- Australian Marriage Law Postal Survey
- Creation of 'Home Affairs' department
- Enterprise Tax Plan (Corporate tax cuts)
- Media reform bill
- NSW: Emergency services levy
- NSW: Local council amalgamations
- QLD: Native vegetation law
- QLD: North QLD Stadium
- QLD: Tackling Alcohol-Fuelled Violence Bill
- VIC: Climate Change Act 2017
- VIC: Indigenous treaty

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

Limitations

There are a number of limitations of this analysis. The EBP project called for the analysis of a high 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 itself suffers from the knowledge problem, this analysis also struggles with the same limitation. Nevertheless, as a premise, good public policy process requires transparency and openness. If there was additional process behind closed doors this in itself could be considered a worrying sign. Best practice policymaking is transparent and should therefore be easy to assess, this project has demonstrated that there is a need for transparency.

Findings

Policy	Demonstrable, evidence-based need	Public interest parameters	Consideration of alternatives	Implementation choices	Cost-benefit analysis	Policy design framework	Further consultation	Produce green then white paper	Develop legislation	Communication	Total
Abolition and replacement of the 457 Visa	Y	Y				Y	Y			Y	5
Australian Marriage Law Postal Survey		Y					Y			Y	3
Creation of 'Home Affairs' department		Y								Y	2
Electoral reform bill	Y	Y	Y	Y			Y		Y	Y	7
Enterprise Tax Plan (Corporate tax cuts)	Y	Y			Y				Y	Y	5
Future Submarine Program	Y	Y	Y	Y				Y		Y	6
Media reform bill	Y		Y	Y					Y	Y	5
National Energy Guarantee	Y	Y	Y	Y		Y	Y			Y	7
NSW: Abolition of greyhound racing	Y		Y		Y		Y	Y	Y	Y	7
NSW: Criminal justice reforms	Y	Y	Y	Y		Y	Y	Y	Y	Y	9
NSW: Emergency services levy	Y	Y	Y	Y					Y		5
NSW: Local council amalgamations	Y						Y			Y	3
QLD: Legalising Uber	Y	Y	Y	Y	Y	Y	Y	Y		Y	9
QLD: Native vegetation law									Y	Y	2
QLD: North QLD Stadium			Y	Y						Y	3
QLD: Tackling Alcohol-Fuelled Violence Bill		Y		Y					Y	Y	4
VIC: Access to medicinal cannabis	Y	Y		Y		Y	Y		Y	Y	7
VIC: Climate Change Act 2017	Y	Y	Y						Y	Y	5
VIC: Indigenous treaty		Y		Y			Y		Y	Y	5
VIC: Voluntary assisted dying	Y	Y	Y	Y		Y	Y	Y	Y	Y	9
	14/20	15/20	11/20	12/20	3/20	6/20	11/20	5/20	12/20	19/20	108/200

Federal

Abolition and replacement of the 457 Visa

In April 2017, former Prime Minister Malcolm Turnbull and Immigration Minister Peter Dutton announced the abolition of the Temporary Work (Skilled) visa (subclass 457 visa) and replacement with the Temporary Skill Shortage visa by March 2018. The 457 visa was originally introduced by the Howard Government in 1996 in response to an inquiry into arrangements for highly skilled specialists.⁹ Over time, however, the visa has come to be associated with filling shortages at various skill levels. The 457 visa was a four year, uncapped demand-driven visa. Applicants were nominated by businesses and approved by the government. The scheme, which came to include over 650 potential occupations, initially attracted 25,000 primary visa holders in 1996-7, peaked at 126,000 by 2012-13, and slightly declined to 95,000 by March 2017.¹⁰

The TSS visa scheme replaced the single four year 457 visa with two new visas. The first, a short term stream, is a two year visa for about 250 occupations. The second, a medium term stream, is a four year visa for about 270 occupations. The new occupation lists are updated regularly based upon an assessment of skills shortages in the market. The new visas also include tighter requirements for English language, work experience, age, salary, criminal checks, labour market testing, limited renewals, and non-discrimination against Australian workers. Turnbull and Dutton claimed in a joint media release that the changes 'will ensure Australian workers are given the absolute first priority for jobs, while businesses will be able to temporarily access the critical skills they need to grow if skilled Australians (sic.) workers are not available'.

The abolition and replacement of the 457 visa came after concern that the visa was allowing foreigners to take jobs from Australians. The debate was between businesses, who argued for access to skilled overseas workers, unions, who sought to protect worker entitlements and raised concerns about exploitation, and the public, who were concerned about job opportunities. These concerns have led to a wide array of parliamentary, departmental and external reviews, as well as changes to require labour market testing in 2013.¹¹ The 457 visa has become increasingly unpopular. A November 2016 poll by Essential Research found that 64 per cent of Australians supported reducing the number of workers brought to Australia under the 457 visa, including a majority of Labor, Liberal/National and Greens voters.¹² Seventeen per cent opposed new restrictions.

There was also evidence that the 457 visa was being used as a pathway to permanent residency. Henry Sherrell of the Parliamentary Library found that between 2003 and 2011 there was a close correlation between job advertisements and 457 visa lodgements. Subsequently, however, a gap opened between job advertisements and 457 visa lodgements. Sherrell theorises that, firstly, the disconnect relates to the growing number of employers using the scheme, potentially from growth

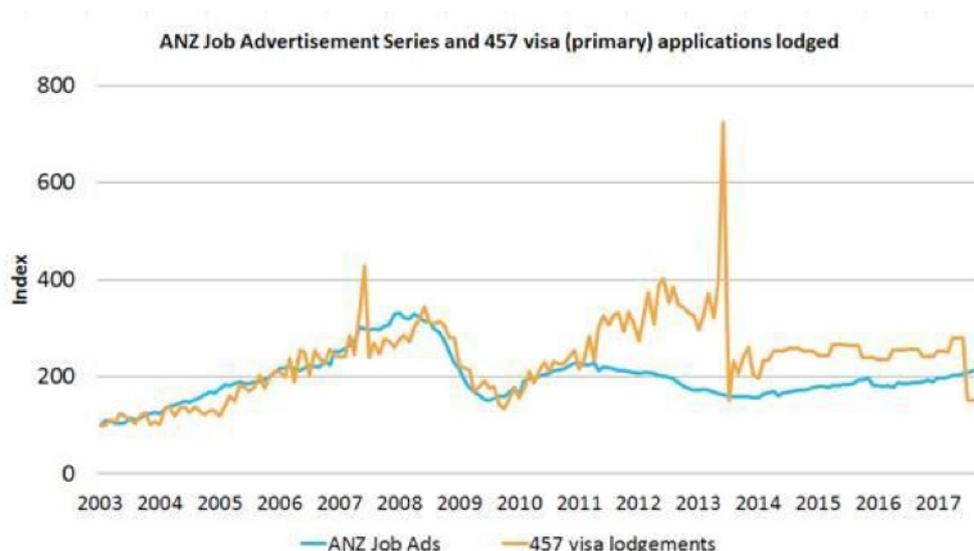
⁹ Committee of Inquiry into the Temporary Entry of Business People and Highly-Skilled Specialists, *Business Temporary Entry – Future Directions*, Australian Government Publishing Service, Commonwealth of Australia, August 1995 ("the Roach Report").

¹⁰ https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/457Visa
<https://search.data.gov.au/dataset/ds-dga-2515b21d-0dba-4810-afd4-ac8dd92e873e/details?q=457>

¹¹ <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22media%2Fpressrel%2F2848505%22>

¹² http://www.essentialvision.com.au/wp-content/uploads/2016/11/Essential-Report_161122.pdf

industries. Secondly, the rise in applications for 457 visas came at the same time as growing numbers of international students and backpackers used the visa as the path to permanent residency.



Source: APH, Henry Sherrell¹³

The independent Azarias Review of the 457 visa program in 2014, which spoke to 150 organisations and received nearly 200 submissions, assessed whether the program was acting in the national interest, not being misused, and responding to economic need. The Azarias Review found evidence of a growing number of onshore applications, including half of all applicants by 2012-13, indicating that the visa was being used as a path to permanent residency. Though, the Review noted, the majority of 457 visa holders did not become permanent residents.

The Review also found that ‘many Australians who are struggling to find work perceive 457 visa holders as a threat.’ Nevertheless, just 1 per cent of 457 visas were found to be non-compliant with the law, indicating a lack of evidence of widespread rorting of the system. The Azarias Review recommended respecting the rights of 457 visa holders, introducing an evidence-based, flexible and transparent 457 occupation list, improving departmental process to reduce misuse, a stronger training requirement for businesses that use the visa scheme, and improving automated monitoring and sanctioning. The Abbott Government agreed with all the recommendations, except for the abolition of labour market testing and expanding nationalities exempt from the English language test.¹⁴ A number of these recommendations were ultimately adopted in the abolition and replacement of the 457 visa.

Critics of the changes claimed that the abolition and replacement was not substantive. The union movement stated that the new scheme did not amount to a substantial change, labelling the announcement ‘more spin than substance’.¹⁵ This was supported by Bob Birrell of The Australian Population Research Institute who labelled the change ‘not much more than a publicity stunt’ and noted that the removed occupational categories account for just 10 per cent of all visa applications.¹⁶ It was also claimed that the changes were driven by the politics of immigration and

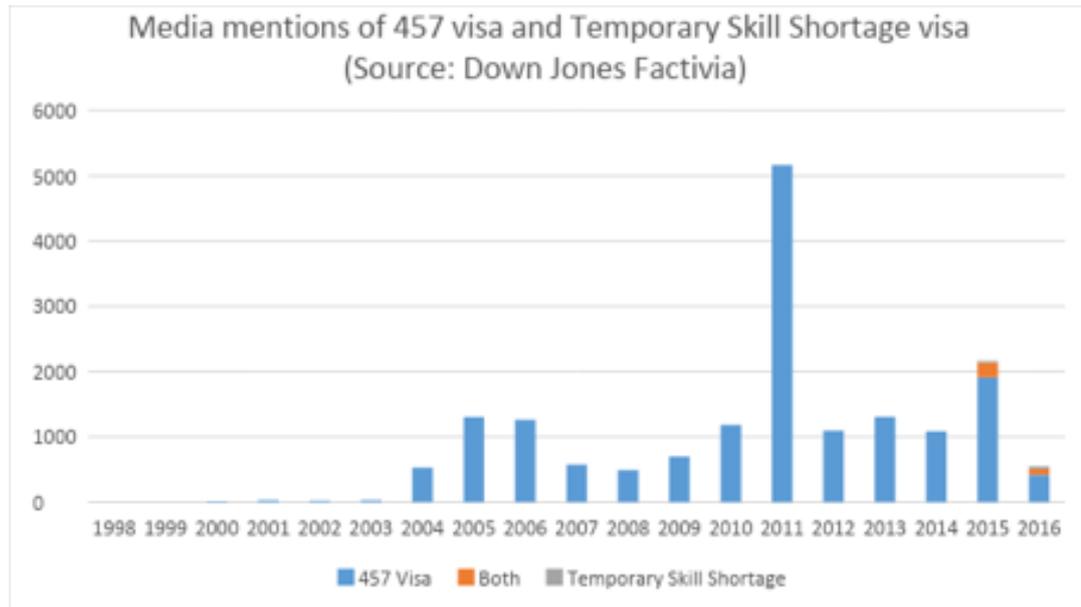
¹³ There was also a spike in 2012-13 because of the budget announcement of a future increase in the cost of visas. The announcement in May 2013 of the increased charge in June 2013 led to the early renewal of many visa holders.

¹⁴ <https://www.homeaffairs.gov.au/about/reports-publications/reviews-inquiries/independent-review-of-the-457-programme/response-to-integrity>

¹⁵ <https://www.smh.com.au/business/workplace/abolition-of-457-visas-is-spin-over-substance-say-unions-20170418-gvmxss.html>

¹⁶ <http://tapri.org.au/wp-content/uploads/2016/04/immigration-reset-7-August-2017-final.pdf>

responding to the electoral threat of One Nation. One commentator stated that ‘While pretending to talk about jobs, [Turnbull] was actually pleading with conservative voters not to abandon the Coalition for Pauline Hanson’s One Nation Party’.¹⁷



From a policymaking perspective, however, the regulatory impact statement which considered alternatives and the costs and benefits of the policy was not developed until after the policy was announced and the decision to change the system was made.²⁰ The regulatory impact statement concluded that the changes would reduce regulatory cost by \$1.185 million, an estimate which was supported by the Office of Best Practice Regulation (OBPR).²¹ However, the OBPR assessed that the regulatory impact statement ‘does not achieve best practice’ because it failed to fully assess the long-term impact on the labour market of the changes. Accordingly, the statement was unable to substantiate why the abolition and replace option is preferred.

17 <https://www.news.com.au/finance/economy/australian-economy/opinion-dont-be-fooled-by-the-457-visa-decision/news-story/1a649d64f8da10b1c97db1e49e362f5d>

18 <https://www.smh.com.au/business/workplace/business-welcomes-457-visa-changes-warns-on-red-tape-20170418-gvn0rm.html>

19 <https://www.theguardian.com/australia-news/2017/apr/25/skilled-migrants-residency-but-citizenship-hurdles-tony-abbott-guardian-essential-poll>

20 https://ris.pmc.gov.au/sites/default/files/posts/2018/01/regulation_impact_statement.pdf

21 https://ris.pmc.gov.au/sites/default/files/posts/2018/01/obpr_assessment_advice_0.pdf

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	A plethora of reviews, in particular the independent Azarias Review, indicated that reforms to the temporary skilled labour system were necessary to restore public faith in the system, and ensure the system was delivering maximum economic benefit.
2	Public interest parameters	Yes	The dual public interest of the abolition and replacement of the 457 visa was (1) ensuring temporary labour did not undermine Australian jobs while delivering the necessary skills for businesses and (2) restoring public confidence in the skilled migration system that was undermined by the perception of misuse of the 457 visa category. On these accounts there appears to have been a public interest in reforming the temporary skilled migration system.
3	Consideration of alternatives	No	The Department of Immigration and Border Protection's regulatory impact statement considered a limited number of alternatives, including abolition and replacement of the 457 visa, reforming the 457 visa, and no changes. Importantly, however, the consideration of alternatives in this statement was post-hoc to the decision to make the changes months earlier.
4	Implementation choices	No	There does not appear to have been consideration of various implementation strategies and options for changing the system within the regulatory impact statement.
5	Cost-benefit analysis	No	The OBPR assessed that the regulatory impact statement did not undertake a full cost-benefit analysis of the 'potential impacts' of the policy change, for example the long-term impact of the changes on Australia's economy was not assessed. Accordingly, OBPR assessed that the statement 'is not best practice'.
6	Policy design framework	Yes	The regulatory impact statement outlines a framework for the policy, including plans for performance measures, and ongoing oversight, and review of the scheme.
7	Further consultation	Yes	The Government undertook further industry consultation in developing the list of occupations for the respective new visas.
8	Produce green then white paper	No	While there were reviews of the 457 visa, the government did not formally develop a green and a white paper to assess the changes to the skilled migration system.
9	Develop legislation	No	There was not specific legislation, or parliamentary debate for the purpose of abolition and replacement of the 457 visa. There were legislative amendments for the purpose of implementing the change.
10	Communication	Yes	While the 457 visa scheme attracted substantial public controversy, the new scheme appears to have been received better by the public and led to less focus on temporary skilled migration since the changes. This indicates that the government was able to successfully communicate their intended changes.
		5/10	

Australian Marriage Law Postal Survey

The Australian Marriage Law Postal Survey was a voluntary, national postal survey of Australian electors regarding whether the Marriage Act 1961 should be amended to include same-sex couples in the statutory definition of marriage. The survey was undertaken by the Australian Bureau of Statistics (ABS) between 12 September and 7 November 2017, and the results were announced on 15 November 2017.

A national vote on same-sex marriage was originally proposed by former Prime Minister Tony Abbott in August 2015 following the decision by a Coalition party room meeting to oppose a conscience vote and maintain opposition to same-sex marriage. Abbott said change to the marriage law should happen 'through a people's vote rather than simply through a Parliament's vote'.²² Abbott's successor, Malcolm Turnbull, also committed to holding the plebiscite, which was Liberal-National Coalition policy at the July 2016 federal election.

The Coalition government, however, failed to legislate its commitment for a compulsory attendance plebiscite in both November 2016 and August 2017. Nevertheless, the Liberal Party confirmed their commitment to a national vote.²³ In order to implement the promise, the government used ministerial power under the Census and Statistics Act 1905 to direct the Australian Statistician to request statistical information on Australian electors views towards changing the law to allow same-sex couples to marry. Turnbull committed to facilitating same-sex marriage legislation if the survey returned a 'Yes' result.

Opponents of the plebiscite argued that it would be costly, constitutionally unnecessary, lacked historical precedent, and would expose the LGBTI community to a hurtful and emotionally challenging debate.²⁴ Victorian Health Minister Martin Foley declared that 'A non-binding discriminatory opinion poll designed to appease the extremists in the Liberal Party would only be a license to hate speech'.²⁵ Liberal Senator Dean Smith labelled the plebiscite as 'abhorrent' and argued that it undermined Australia's 'the democratic compact' which is built on the Westminster parliamentary decision making.²⁶ Australian Marriage Equality claimed that polling indicated 72 per cent of Australians already support same-sex marriage and therefore it was unnecessary.²⁷

Plebiscite supporters argued that it was fulfilling the Coalition's 2016 election commitment and necessary before changing the important social institution. Liberal Senator Zed Seselja declared that 'The social and cultural element of the issue of marriage is why it is appropriate for the Australian people to have their say, and polls that show wide support for the plebiscite demonstrate that most Australians understand that.'²⁸ A Newspoll released in June 2017 indicated that 46 per cent of voters support a plebiscite, compared to 39 per cent who oppose and 15 per cent that are undecided.²⁹

22 <https://www.smh.com.au/politics/federal/tony-abbott-flags-plebiscite-on-samesex-marriage-in-bid-to-defuse-anger-20150811-giwyg1.html>

23 <https://www.smh.com.au/politics/federal/turnbull-government-kills-samesex-marriage-conscience-vote-agrees-to-postal-plebiscite-20170807-gxqzam.html>

24 <https://www.smh.com.au/opinion/why-a-plebiscite-on-samesex-marriage-is-dangerous-and-divisive-20160414-go63vs.html>

25 <http://www.abc.net.au/news/2016-10-12/same-sex-marriage-debates-impact-on-lgbti-people/7924480>

26 <https://www.smh.com.au/politics/federal/an-abhorrent-idea-liberal-senator-dean-smith-announces-he-will-not-vote-for-a-gay-marriage-plebiscite-20160913-grevsm.html> <https://www.smh.com.au/opinion/marriage-equality-plebiscite-would-set-a-precedent-for-when-we-defer-to-a-popular-vote-20151221-glse44.html>

27 <https://www.australianmarriageequality.org/wp-content/uploads/2015/08/AME-Fact-Sheet-Plebiscite.pdf>

28 <https://www.smh.com.au/opinion/why-we-should-have-a-samesex-marriage-plebiscite-and-why-ill-vote-no-zed-seselja-20170815-gxwng6.html>

29 <https://www.theaustralian.com.au/national-affairs/newspoll/newspoll-voters-demand-samesex-marriage-poll/news-story/394b2887fb55bbcee dc06b1ba846e806>

Ultimately, 79.5 per cent of Australians participated in the survey. Survey researcher Jill Sheppard of the Australian National University attributed the high turnout to Australians being 'conditioned to vote' and said that the process had gone smoothly.³⁰ 61.6 per cent of survey participants indicated their support for same-sex marriage, and 38.4 per cent indicated their opposition. Same-sex marriage was subsequently legislated by a private members bill which received Royal Assent on 8 December 2017.³¹

Australian Statistician David W Kalisch subsequently claimed that the survey was 'delivered to a standard that exceeded the community's and the government's expectations' – pointing to the short time frames and high turnout.³² Kalisch attributes the success, in contrast with the 2016 census which damaged the organisation's reputation, to a 'whole-of-ABS effort', an 'agile' working approach, engaging with community organisations and interested parties, and maintaining awareness about the survey throughout the process.

30 <https://www.smh.com.au/politics/federal/samesex-survey-leaves-an-enduring-pain-for-lgbti-people-20171102-gzdeq4.html>

31 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/SSMarriageBills

32 <https://www.afr.com/leadership/6-lessons-from-the-australian-marriage-law-postal-survey-20180112-h0hi6k>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	No	The Government did not establish, from an evidential perspective, that a plebiscite was legally necessary to resolve the question of the definition of marriage. The Government does appear to have the power to make amendments to marriage legislation without a national vote. The decision to proceed with a national vote appears to have been a political decision.
2	Public interest parameters	Yes	The Government stated a public interest in a democratic vote about a contentious social policy issue such as same-sex marriage. However, notably, opponents did argue that the plebiscite was against the public interest, unprecedented in the Australian context, and the issue should have been resolved with less public attention by the parliament. There were also questions raised about the bypassing of parliament to enact the plebiscite policy.
3	Consideration of alternatives	No	The government did not formally consider the alternatives of a national vote to resolve the issue.
4	Implementation choices	No	The government did not undertake analysis of the various options for implementing the survey.
5	Cost-benefit analysis	No	The Government does not appear to have undertaken a full cost-benefit analysis of the survey policy.
6	Policy design framework	No	The Government did not design how to implement the policy prior to the decision to proceed with a plebiscite. This led to a slow release of information – such as how overseas electors would participate – subsequent to the decision to proceed being announced. Furthermore, prior to the plebiscite, the Government did state how a ‘Yes’ vote would be implemented in practice by, for example, presenting draft legislation. The Government also did not address concerns about religious freedom concerns prior to the plebiscite, which has continued to remain an issue of public attention. ²
7	Further consultation	Yes	The government and the ABS reportedly undertook consultation with both peak bodies for the ‘Yes’ and ‘No’ sides of the campaign about various matters, including question language and using survey graphics in advertising material. ³ The ABS also consulted with community groups to maximise turnout.
8	Produce green then white paper	No	The Government did not develop a white and green paper for the purposes of deciding how to implement same-sex marriage.
9	Develop legislation	No	The Government was unable to legislate in favour of the national vote, and instead used ministerial power to direct the ABS to collect statistics.
10	Communication	Yes	The Government successfully communicated about the survey, as indicated by the 900,000 updates to electoral enrolment prior to the survey and the relatively high level of turnout for a voluntary initiative. ⁴
		3/10	

Creation of 'Home Affairs' department

On July 18, 2017, former Prime Minister Malcolm Turnbull announced the establishment of a 'Home Affairs' department to be led by then-Immigration Minister Peter Dutton.³³ The new department would be responsible for immigration, border protection, national security, emergency management, transport security, multicultural affairs, counter-terrorism coordination, as well as oversight of Australian Border Force, the Australian Security Intelligence Organisation (ASIO), the Australian Federal Police, Australian Border Force, the Australian Criminal Intelligence Commission and the Australian Transaction Reports and Analysis Centre. The Attorney-General would maintain responsibility for approval of ASIO's interception warrants, and would assume responsibility for the Inspector-General of Intelligence and Security, and the Independent National Security Legislation Monitor.

The creation of the Home Affairs Department, which cost \$5.5 million and includes 23,000 public servants, has been described as the 'biggest machinery of government changes we've seen in Australia in many decades'.³⁴ Turnbull announced the new department at the same time as releasing review of national security arrangements by former Department of Foreign Affairs and Trade secretaries Michael L'Estrange and Mr Steven Merchant. However the review itself did not recommend the creation of the home affairs department.³⁵ Turnbull stated that:

'The arrangements that I have announced are ones that are logical, they are rational, they make operational sense and they will enable Peter Dutton as the minister for home affairs to be able to have the responsibility for those key agencies that are defending, preserving, protecting our national security at home.'³⁶

Defenders of the proposal argued that it was necessary to ensure effective strategic planning, oversight and coordination of Australia's intelligence and national security apparatus to respond to future threats.³⁷

Critics of the proposal, however, argued that the changes were unnecessary and political. 'I think we have a system that works extremely well and playing politics with Australians' lives and safety potentially is an extremely bad move in my view,' Michael Wesley of the Australian National University told Sky News.³⁸ There were also questions raised about the process underlying the announcement of the creation of the department. Professor Wesley asked 'where is the comprehensive review that the Turnbull government has done and where is the evidence that we need a different form of national security structures?' The department's creation has been described as following 'rushed, shambolic process' and reportedly there was no operative document explaining the change before the announcement.³⁹ Greg Sheridan, the foreign editor of *The Australian*, reported that the creation of the new department was presented to the Cabinet's National Security Committee without discussion as a 'fait accompli' and two senior ministers, foreign minister Julie Bishop and defence minister Marise Payne, were not in attendance.⁴⁰

33 <https://www.malcolmturnbull.com.au/media/press-conference-announcing-the-establishment-of-the-home-affairs-portfolio>

34 <http://www.abc.net.au/news/2018-05-29/what-is-peter-duttons-home-affairs-department/9813456><https://www.smh.com.au/public-service/home-affairs-is-now-the-apss-second-largest-agency-bosses-reveal-20180226-h0wn39.html><https://www.sbs.com.au/news/creation-of-home-affairs-agency-cost-5-5m>

35 <https://www.pmc.gov.au/resource-centre/national-security/report-2017-independent-intelligence-review>

36 <https://www.theaustralian.com.au/national-affairs/australia-to-get-super-security-home-affairs-ministry/news-story/350a35982473f7995021d51f5436bf42>

37 <https://www.lowyinstitute.org/the-interpreter/home-affairs-driven-manifest-need> <https://www.theaustralian.com.au/news/inquirer/home-affairs-department-security-demands-a-fresh-approach/news-story/897f22d4e322c1662d67927a71d27edf>

38 <https://www.theaustralian.com.au/national-affairs/australia-to-get-super-security-home-affairs-ministry/news-story/350a35982473f7995021d51f5436bf42>

39 <https://www.theaustralian.com.au/national-affairs/national-security/turnbull-flying-solo-on-home-affairs-superministry/news-story/80e5a0646a8a3ec35f3edda2ce7a1ae9>

40 <https://www.theaustralian.com.au/news/inquirer/home-affairs-decision-at-risk-of-quickly-becoming-a-mistake/news-story/11f0347677109926db808c7024113a21>

It was also claimed that the creation of the department was ‘political’, a power grab or ‘turf maximisation’ process by Peter Dutton.⁴¹ Sheridan theorised that Turnbull avoided systematic analysis and coordination to avoid a pushback, ‘Taken altogether, this has been shockingly bad process... it is astonishing that there was not a substantial and rigorous inquiry and a big, deliberative decision-making process’. Indicating the potential for future instability in administrative arrangements, Labor has refused to commit to the administrative change and may undo the change in the future.⁴²

Sheridan also reported that when the proposal was previously canvassed, during the Abbott Government, consultations indicated that ASIO and the Australian Federal police ‘hated the idea’. Former Prime Minister Tony Abbott subsequently confirmed that when he investigated the creation of a similar super portfolio he was advised that there was no need.⁴³ This followed the earlier review by the Rudd Government which recommended against the creation of the home affairs department – which led to the back down on Kevin Rudd’s 2007 election promise to create such a department. The review noted that current arrangements ‘are generally effective’ and merging organisations would be disruptive, create significant new costs, could create an ‘inward-looking, siloed and slow to adapt’ department.⁴⁴

UK-based public administration commentators noted that the Home Office model, which Turnbull claimed was the basis of his plan, developed over two centuries and is not perfect, and warned against the likelihood of the claimed benefits.⁴⁵ Meanwhile, the United States’ Department of Homeland Security, which was created in response to coordination issues raised by the 9/11 terrorist attacks, has struggled to effectively operate in a unified manner.⁴⁶ Michael Pezzullo, the new secretary of the Home Affairs Department, rejected claims that the new department would be overly bureaucratic or undermine checks on executive power.

41 <https://www.theaustralian.com.au/national-affairs/national-security/turnbull-flying-solo-on-home-affairs-superministry/news-story/80e5a0646a8a3ec35f3edda2ce7a1ae9>

42 <https://www.theaustralian.com.au/national-affairs/immigration/labor-refuses-to-rule-out-undoing-home-affairs-department-merger/news-story/012be6c52fe8aa8b64f49f9ca1452ed8>

43 <http://www.abc.net.au/news/2017-07-19/abbott-says-he-was-advised-against-home-affairs-super-ministry/8724960>

44 <http://ict-industry-reports.com.au/wp-content/uploads/sites/4/2013/10/2008-Review-Homeland-and-Border-Security-Ric-Smith-June-2008.pdf>

45 <http://www.abc.net.au/news/2017-07-19/british-experts-urge-scepticism-over-home-affairs-super-ministry/8722800>

46 Jerome Kahan, “‘One DHS’ Revisited: Can the Next Homeland Security Secretary Unite the Department?,” *Journal of Homeland Security and Emergency Management* 11, no. 1 (2014): 1–24, <https://doi.org/10.1515/jhsem-2013-0088>; Thomas A. Birkland, “Disasters, Catastrophes, and Policy Failure in the Homeland Security Era,” *Review of Policy Research* 26, no. 4 (July 1, 2009): 423–38, <https://doi.org/10.1111/j.1541-1338.2009.00393.x>.

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	No	The creation of the Department of Home Affairs was announced without an inquiry to assess whether there was an existing problem with coordination that needed to be addressed or could be addressed with a new structure. There was notably a lack of formal consultation with stakeholders. Establishing a new department was specifically against the recommendation of an earlier review into the matter, and there is not clear evidence that matters have changed since.
2	Public interest parameters	Yes	The Government appealed to a public interest in improved coordination in national security. The Government did not, however, respond to concerns raised about undermining existing processes that were working effectively and serving the national interest.
3	Consideration of alternatives	No	The L'Estrange and Merchant review included a series of recommendations to improve the operation of Australia's national security apparatus, however, did not consider these recommendations in the context of creating a new department. Therefore the creation of the new Department was not considered in the context of alternatives to improve coordination.
4	Implementation choices	No	The Government does not appear to have assessed the potential mechanisms for implementing the policy in advance of the policy announcement.
5	Cost-benefit analysis	No	The Government does not appear to have undertaken a review that recommended the creation of the department let alone a formal cost-benefit analysis of potential administrative arrangements.
6	Policy design framework	No	There does not appear to have been a clear document or series of documents that outlined the principles, goals, delivery mechanisms, implementation phases, performance measures, ongoing evaluation mechanisms and reporting requirements, oversight and audit arrangements for the new department. This is confirmed by reports that indicate that there was not a single operational document outlining the arrangements in advance of the department's creation.
7	Further consultation	No	The decision to create the new department appears to have been made both without initial formal consultation with stakeholders or later consultation. The decision was made at the political level.
8	Produce green then white paper	No	The Government has not produced a green or white paper on administrative arrangements.
9	Develop legislation	No	The change was not legislated. Turnbull explicitly stated that administrative changes are the preserve of the Prime Minister.
10	Communication	Yes	The Government clearly stated the roles and functions of the new Home Affairs department. ⁵
		2/10	

Electoral reform bill

In 2016, the Commonwealth Parliament legislated to change the Senate voting system from Full Preferential Voting to Partial Preferential Voting. From 1984 to 2016, Australians voters could either place '1' above the line to adopt the preferences from a Group Voting Ticket formulated by the elected group or number every candidate box below the line. Under the new system voters are asked to number six boxes above the line, adopting only preferences shown within the selected groups, or alternatively number 12 boxes below the line. The changes put an end to group voting tickets designed by the parties, restricted the ability of individuals from having positions in multiple parties, and allowed parties to have their logo on the voting paper.

Introducing the changes to the system in Parliament, then Prime Minister Malcolm Turnbull declared that 'the Senate Voting System has been disturbed by backroom deals, by preference whisperers, by the manipulation of micro parties such that we have seen the will of the people frustrated'.⁴⁷ Turnbull claimed that the changes would ensure that the system better reflects the wishes of the Australian people by preventing micro parties with a tiny fraction of primary votes from being elected. Though, notably, the major parties are receiving declining support which helps explain growing numbers of minor party senators.⁴⁸

The reforms derive from an investigation by the Joint Standing Committee on Electoral Matters following the 2013 election.⁴⁹ The Committee found that the system of voting for a single party above the line had delivered some outcomes which 'distorted the will of the voter'. The Committee found micro parties were being created to funnel preferences to each other with no way for voters to know where preferences would end up. This process came to be known as 'preference harvesting'.⁵⁰ The result of micro parties preferencing each other, even when they had opposite policies and philosophies, increased the likelihood that one would succeed – such as Australian Motoring Enthusiast Party's Ricky Muir who was elected with just 0.51% of Victoria's vote.⁵¹

The Committee made six recommendations to improve voting in a unanimous report supported by Liberal, Labor and Greens members, which were adopted in the reforms proposed by the Government. Labor, however, came to oppose the changes reportedly because of concerns that it would favour the Liberals and Nationals in the Senate.⁵² Liberal Democratic Senator David Leyonhjelm raised concerns that the changes would lead to the Senate being dominated by Liberal, Labor and the Greens, reducing alternative voices in the political process.⁵³ The changes were passed with support from the Greens and independent Senator Nick Xenophon. Prior to the change 97 per cent of electors voted above the line, up from about 85 per cent in 1984.⁵⁴ Following the changes, the above the line voting slightly declined at the 2016 election to about 93 per cent.

47 <https://www.malcolmturnbull.com.au/media/senate-voting-reform>

48 The declining support for major parties is discussed in Matthew Lesh, *Democracy in a Divided Australia* (Brisbane, Australia: Connor Court Publishing, 2018).

49 https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Interim_Report

50 <https://www.news.com.au/national/politics/pm-backs-election-changes-to-wipe-out-preference-harvesting-and-make-process-transparent/news-story/7deadc17e6bdf0e786c7cd496e10fac9>

51 <https://results.aec.gov.au/17496/Website/SenateStateFirstPrefs-17496-VIC.htm>

52 <https://www.theguardian.com/australia-news/2016/feb/22/malcolm-turnbull-moves-to-overhaul-senate-voting-system-before-election>

53 <http://www.abc.net.au/news/2016-03-10/fact-check-senate-voting-reforms-david-leyonhjelm/7203556>

54 https://www.aec.gov.au/About_AEC/research/files/sbps-atl-and-btl-voting.pdf

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The Government referred to the work of the Joint Standing Committee on Electoral Matters which established that micro parties were manipulating the voting system through a process of 'preference harvesting'.
2	Public interest parameters	Yes	The Government appealed to a public interest in ensuring that the voting system for the Senate would better reflect the wishes of the Australian people. Turnbull specifically said that the changes 'are for democracy'. ⁶
3	Consideration of alternatives	Yes	The Joint Standing Committee on Electoral Matters' report on Senate voting outlines the consideration of various alternatives to address issues with the Senate voting system, as presented in public submissions and hearings.
4	Implementation choices	Yes	The Government considered different ways to implement the changes, including the number of errors allowed and whether you can just vote 1 above the line in the Joint Standing Committee on Electoral Matters process.
5	Cost-benefit analysis	No	The Government does not appear to have undertaken an assessment of the cost of the changes or the potential benefits.
6	Policy design framework	No	The Government did not outline how the policy would be implemented prior to the passing of the legislation.
7	Further consultation	Yes	The Government referred the proposed legislation to the Joint Standing Committee on Electoral Matters for a subsequent public inquiry prior to the passing of the laws, providing an opportunity for further consultation. ⁷
8	Produce green then white paper	No	The Government did not undertake an investigation
9	Develop legislation	Yes	The Government developed legislation and there was extensive parliamentary debate, including 28 hours of discussion.
10	Communication	Yes	The changes were clearly communicated by the Government in media releases, as well as subsequently by the Australian Electoral Commission. ⁸
		7/10	

Enterprise Tax Plan (Corporate tax cuts)

In May 2016, then-Treasurer Scott Morrison announced the Coalition's Enterprise Tax Plan. The Plan reduces company tax rate from 30 per cent to 25 per cent in annual stages by 2026-27, at a total reduction in government revenue over the decade by \$48.2 billion. It would also expand the unincorporated small business tax discount for unincorporated businesses that do not pay company tax. Morrison claimed that the tax reduction would increase investment into Australia and increase living standards by expanding the size of the economy by 1 per cent in the long term.⁵⁵

The Enterprise Tax Plan follows bipartisan reductions in the rate of company tax over the last 30 years. Company tax peaked at 49 per cent in 1987 and was progressively reduced by the Hawke, Keating, and Howard governments to 30 per cent by 2001. The Gillard Government also proposed, but did not legislate, a reduction in corporate taxation from 30 per cent to 29 per cent.⁵⁶

A variety of taxation policy reviews have recommended reducing the company tax rate further. The Henry Tax Review in 2009 found that Australia's company tax rate was high by global standards and as a small open economy was compromising investment. Modelling by KPMG released with the Review found that company tax has the largest welfare loss of any federal tax, and is therefore the least efficient.⁵⁷ The Review specifically recommended reducing the rate to 25 per cent to align Australia's rate with the OECD average (the OECD average has subsequently declined further).

The case for reducing the corporate tax rate was supported by subsequent economic modelling. An analysis by Treasury found that reducing the company tax to 25 per cent would increase economic growth in the long-run by 1 per cent, as Morrison had claimed during the policy announcement.⁵⁸ KPMG found that the decrease in company tax would increase investment, as a proportion of GDP, by as much as 2.4 per cent by 2021-22.⁵⁹ Furthermore, a separate analysis by Treasury found that two-thirds of the company tax reduction would go to households, largely because of higher wages; while just one-third would go to shareholders.⁶⁰

Chris Murphy of the Australian National University found that for every \$1 reduction in government revenue of reducing company tax there is a \$2.39 benefit to consumers.⁶¹ Murphy's analysis specifically factored in the impact on Australia of the United States' reduction in corporate tax from 35 per cent to 21 per cent in 2018. Following the US, and other European reductions, Australia now has the third highest corporate tax rate in the developed world following company tax reductions in other OECD countries.

55 <http://sjm.ministers.treasury.gov.au/media-release/055-2016/>

56 <http://www.abc.net.au/news/2016-06-29/fact-check-labor-on-corporate-tax-cuts/7549754>

57 http://taxreview.treasury.gov.au/content/downloads/final_report_part_1/00_AFTS_final_report_consolidated.pdf

58 This is discussed by Michael Kouparitsas, Dinar Prihardini, and Alexander Beames, "Analysis of the Long Term Effects of a Company Tax Cut," Treasury Working Paper (Canberra, ACT: The Treasury, Australian Government, May 2016), treasury.gov.au/publication/analysis-of-the-long-term-effects-of-a-company-tax-cut/.

59 KPMG Economics, "Modelling the Macroeconomic Impact of Lowering the Company Tax Rate in Australia" (Canberra, ACT: KPMG, April 28, 2016), <https://static.treasury.gov.au/uploads/sites/1/2018/04/p2016-279115-KPMG-WP-2016-02.pdf>.

60 Xavier Rimmer, Jazmine Smith, and Sebastian Wende, "The Incidence of Company Tax in Australia" (Canberra, ACT: The Treasury, Australian Government, 2014), <https://treasury.gov.au/publication/economic-roundup-issue-1-2014/economic-roundup-issue-1/the-incidence-of-company-tax-in-australia/>.

61 https://www.murphyeconomics.com.au/Information/tax/ATF_Vol.33-1_2018_Murphy.pdf

The corporate tax cuts are strongly opposed by the Labor opposition and other groups. Opposition Leader Bill Shorten decried the government's plan, calling it 'a \$50 billion giveaway to big business,' and 'trickle-down economics'.⁶² The Australia Institute claimed that the tax reduction would leave less money for schools, hospitals and other services, and benefit foreign shareholders and big banks who pay little tax.⁶³ It was also claimed that Australia's dividend imputation system, which allows for individual Australian shareholders to receive a tax deduction on their personal tax, would nullify the benefit of the company tax cut.⁶⁴ A key theme of the opposition was the assertion that 'big business' does not pay their 'fair' share of tax, and that a small number of companies will benefit from tax cuts.⁶⁵

Nevertheless, the proposal received strong support from the business community, including the Business Council of Australia and the Australian Chamber of Commerce and Industry, who claimed it would increase jobs and investment.⁶⁶ Daniel Wild of the Institute of Public Affairs has written that 'Reducing the tax rate will increase investment, which will increase competition, output, and, consequently, the demand for Australian workers. This will raise both wages and employment.'⁶⁷

Following difficulties achieving support for the full package in the Senate, the government split the plan into two parts. Enterprise Tax Plan No 1., which was legislated in May 2017, reduces the tax rate to 27.5% for businesses with less than \$50 million turnover by 2018-19. Enterprise Tax Plan No 2. extends the company tax reduction to 25 per cent for all businesses by 2026-27. The latter part of the plan was ultimately abandoned by the government amid leadership instability in August 2018. Then-Prime Minister Malcolm Turnbull said that 'I think the truth is the political climate that used to have a broad bipartisan consensus ... while that consensus used to be there, it is there no longer, and there is a lot more work that needs to be done'.⁶⁸

62 http://www.billshorten.com.au/address_to_the_fight_for_queensland_rally http://www.billshorten.com.au/labor_s_election_campaign_launch_sydney_sunday_19_june_2016

63 <https://medium.com/@TheAustraliaInstitute/15-reasons-why-the-case-for-a-company-tax-cut-for-big-business-has-collapsed-f4ce8ec7193e>

64 Hutchens, Gareth, "Australia tax office says 36% of big firms and multinationals paid no tax", The Guardian, (7 December, 2017)

65 See, for example, The Australia Institute, "Australia Is a Low Tax Country," The Australia Institute, April 17, 2018, <http://www.tai.org.au/content/australia-low-tax-country>.

66 <http://www.bca.com.au/company-tax> <https://www.australianchamber.com.au/news/australian-business-and-jobs-at-risk-after-company-tax-cut-defeat/>

67 <https://ipa.org.au/publications-ipa/research-papers/six-myths-business-tax-cut>

68 <http://www.abc.net.au/news/2018-08-22/company-tax-cuts-fail-again-in-the-senate/10142174>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	There is substantial evidence that Australia's corporate tax rate is high by international standards and therefore discouraging investment. This was discussed by the Henry Tax Review, as well as various other independent reviews of Australia's tax system and the corporate tax.
2	Public interest parameters	Yes	The Government claimed that reducing the corporate tax is in Australia's economic interest. There is evidence that reducing corporate tax rates is economically beneficial to the Australian public, primarily by boosting investment which increases wages and creates jobs.
3	Consideration of alternatives	No	The Government does not appear to have directly considered alternative tax changes to increase investment, such as changing arrangements related to deductions for new investment, reducing regulatory burdens, or reducing payroll taxation (albeit a state responsibility). These matters were likely under consideration by the 'Better Tax' white paper in 2015, however this process was suspended by the Turnbull Government.
4	Implementation choices	No	The Government does not appear to have analysed various implementation options for reducing corporate tax.
5	Cost-benefit analysis	Yes	The analysis produced by Treasury indicated the budgetary cost as well as estimates of the potential benefits to the economy – which totalled a 1 per cent larger economy in the long-run.
6	Policy design framework	No	The Government does not appear to have created a full policy design framework, including stating the objectives and goals, delivery mechanisms, performance measures and evaluation plans.
7	Further consultation	No	The Government does not appear to have undertaken substantial further consultation, with the notable exception of a 2017 consultation by Treasury on eligibility for lower company tax rate. ⁹
8	Produce green then white paper	No	The government did release a discussion paper (green paper) in preparation for the 'Better Tax' white paper, however the tax reform white paper process was suspended following the change in September 2016 leadership from Tony Abbott to Malcolm Turnbull in a case of abandoning the priorities of the previous
9	Develop legislation	Yes	The Government developed legislation both to implement the initial Enterprise Tax Plan 1., which did become law, and Enterprise Tax Plan 2., which has not become law.
10	Communication	Yes	The Government clearly communicated the need for and intended reforms.
		5/10	

Future Submarine Program

In April 2016, former Prime Minister Malcolm Turnbull announced that Australia's 12 new submarines would be built locally with the support of French submarine builder, DCNS (now known as Naval Group), based on the Shortfin Barracuda proposal.⁶⁹ The new submarines are scheduled to enter service in the early 2030s, and finish being built by 2050. The announcement labelled the \$50 billion submarines the 'largest and most complex defence acquisition Australia has ever undertaken' and stated that the French bid was most able to meet the unique capability requirements: superior sensor performance and stealth characteristics, as well as range and endurance similar to the Collins-class submarine. The Government's considerations also included cost, schedule, program execution, through-life support and Australian industry involvement.

This much delayed announcement followed almost a decade of inquiries and public debate about replacing Australia's ageing Collins-class submarines. The planning for the replacement commenced in late 2007, following a landmark report by the Submarine Institute of Australia that advocated for a new fleet.⁷⁰ The 2009 Defence White Paper, *Defending Australia in the Asia Pacific Century: Force 2030*, stated that an expanded submarine fleet of 12 is necessary to defend Australia against growing forces in the Asia-Pacific region, protect the defence force, undertake stealth and intelligence gathering missions, and increase the difficulty for adversaries.⁷¹ Construction was initially intended to begin in South Australia in 2016, however planning was subsequently delayed.

In 2014, it was reported that the Abbott Government considered building the fleet in Australia to be 'too risky and too expensive' and was now considering off-the-shelf options, in particular, the Japanese built Soryu-class submarine at an estimated cost of \$25 billion or the German TKMS submarines at a cost of \$20 billion.⁷² Then-Prime Minister Tony Abbott declared that the decision should be based on 'defence requirements, not on the basis of industry policy or on the basis of regional policy'. In the same year, then-Defence Minister David Johnston said that he wouldn't trust South Australian-based Australian Submarine Cooperation to 'build a canoe'.⁷³

The 2016 Defence White Paper restated the need to build new submarines in the context of China's growing number of submarines and around half of the world's submarines operating in the Indo-Pacific region by 2035. The White Paper, however, did not explicitly commit to building the new fleet in Australia. The 2016 White Paper was in the context of the February 2015 decision by the Abbott Government to undertake a 'competitive evaluation process' to decide whether the submarines should be built overseas, built in Australia, or a hybrid of both, and consider Japanese, French, and German bids.

The Turnbull Government's Naval Shipbuilding Plan claimed that building the submarines in South Australia 'will generate significant economic growth, revitalise industrial capacity and sustain thousands of jobs, revitalise Australia's heavy-engineering and advanced-manufacturing industrial capability and capacity, and grow and sustain thousands of Australian jobs'.⁷⁴ The decision to build in Australia is supported by 70 per cent of the public, according to a Lowy Institute Poll.⁷⁵

69 <http://news.navy.gov.au/en/Apr2016/Fleet/2875/Future-submarine-announcement.htm#.W4NYeOgzZaR>

70 <https://web.archive.org/web/20080303213823/http://www.theaustralian.news.com.au/story/0,25197,22981343-31477,00.html>

71 http://www.defence.gov.au/whitepaper/2009/docs/defence_white_paper_2009.pdf

72 <https://www.theaustralian.com.au/national-affairs/defence/homebuilt-submarines-deemed-too-expensive-too-risky/news-story/9c1915cf98b40dd1e7c44516cc2a1caf>

73 <http://www.abc.net.au/news/2014-11-25/johnston-wouldnt-trust-submarine-corporation-to-build-a-canoe/5917502>

74 <https://www.smh.com.au/politics/federal/naval-shipbuilding-plan-needs-13b-for-yards-thousands-more-workers-20170515-gw5bs1.html>

75 <https://www.lowyinstitute.org/publications/lowy-institute-poll-2016>

The decision to build in South Australia, at what appears to be a substantial extra cost to the taxpayer, has been criticised as ‘wasteful parochialism’ and prioritising industry policy over defence capability.⁷⁶ Australian National University professor, and former defence intelligence official, Paul Dibb raised concerns that decision to build the submarines locally was contrary to ‘evidence-based policy,’ weakens relations with Japan, and could raise issues if French strategic priorities were not engaged in a conflict with China.⁷⁷ A 2017 report by Insight Economics written by Hugh White of the Australian National University recommended dumping the current plan in favour of ‘off the shelf’ submarines, considering the ‘excessive costs’ and strategic, economic and technical risks.⁷⁸

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	Considering Australia’s strategic context and long-term potential threats, the Government demonstrated an evidence based need for new high capacity submarines to replace the existing vessels. It should be noted, however, that the decision to build the submarines in Australia, while popular particularly in South Australia, does not appear to have been substantiated by the evidence and could raise serious cost and capability risks for the program.
2	Public interest parameters	Yes	Governments have stated multiple public interest justifications of the Future Submarines Project, including defending Australia, securing jobs in South Australia, and building defence industry capacity. However, it should be noted, that these objectives could be contradictory, particularly if building in Australia reduces quality and therefore defence capacity.
3	Consideration of alternatives	Yes	The Competitive Evaluation Process formally considered the alternatives for the submarine project. This process was assessed, by the Auditor-General to be ‘effectively designed and implemented’. ¹⁰ Nevertheless, it was noted that the lack of full open tender process minimised the potential alternatives.
4	Implementation choices	Yes	The Government did consider implementation choices – including whether to build in Australia or overseas or a mixture thereof, in the Competitive Evaluation Process.
5	Cost-benefit analysis	No	The Government does not appear to have undertaken a full cost-benefit analysis of building the submarines in Australia.
6	Policy design framework	No	The Auditor-General assessment of Australia’s shipbuilding programs, which includes the submarine program, could not establish the effectiveness of governance arrangements, stated that the program is facing ‘high to extreme risks’ and has not updated costs to reflect the decision to build the submarines in Australia. ¹¹ This finding indicates that the policy design framework has not been fully developed in advance of the decision to proceed.
7	Further consultation	No	The Government does not appear to have undertaken subsequent further consultation in a formal open process.
8	Produce green then white paper	Yes	The Future Submarines Program derives from the 2009 and 2016 defence green and white papers.
9	Develop legislation	No	The decision to build new submarines was not legislated.
10	Communication	Yes	The Future Submarines Program has included a clear, relatively low cost communication strategy. ¹²
		6/10	

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77 <https://www.theaustralian.com.au/news/inquirer/abysmal-submarine-process-a-slap-in-the-face-to-japan/news-story/0046940c126208b1a204a73d93513041> + <https://www.theaustralian.com.au/opinion/columnists/greg-sheridan/japan-sees-chinese-hand-in-decision-to-overlook-soryu/news-story/23c0bd008b06d77b5f3e8bdeee95265a>

78 http://www.insighteconomics.com.au/reports/2017_Insight_Economics_Submarine_Report.pdf

Media reform bill

In October 2017, the Australian Parliament legislated a series of changes to Australia's media laws, including:

- abolition of the 'two out of three' rule, which prevents a single entity from controlling radio, newspaper, and television assets in a single market;
- abolition of the 75 per cent reach rule, which prevents a single radio or television entity broadcasting to more than three quarters of Australians;
- abolition of broadcasting license fees paid by commercial broadcasters;
- a reduction in gambling advertisement;
- changes to anti-siphoning to strengthen local subscription television providers;
- additional local programming obligations for regional commercial television broadcasters; and
- \$60 million for regional publishers and regional cadetships.⁷⁹

The laws would still prevent a single person from owning more than two radio stations and more than one commercial television station in a single market, as well as local content rules. As part of deals reached with Senate crossbenchers, including Senator Xenophon and One Nation senators, the Government also committed to creating a public register of foreign-owned media assets, enhancing the ABC's focus on rural and regional Australia, transparency measures for public broadcasters, the requirement that the ABC is 'fair' and 'balanced' and a community radio package.⁸⁰

The Government argued that package was a necessary response to the changing media landscape, including the disruption caused by the rise of the internet and the decline of traditional advertising revenues. The removal of licence fees is a response to media industry financial pressures, and the removal of stringent ownership requirements is supposed to allow for mergers and economies of scale in the industry.⁸¹ Communications Minister Mitch Fifield claimed that 'The government's comprehensive and holistic package of reforms seeks to give Australian media organisations a fighting chance by freeing them from outdated laws and regulations.'⁸²

The reforms were strongly supported by the media industry, who claimed that in a changing market they need the capacity to build scale through mergers to reduce costs and capture more of the declining advertising revenue market. The reforms were supported by all of Australia's major television, radio, and print companies – including the commercial and regional television and radio networks, and News Ltd and Fairfax. John Hartigan, chairman of regional broadcaster Prime, said that 'The current framework is broken. This bill represents an opportunity to commence reparation before traditional Australian media is further compromised.'⁸³ Free TV Australia chairman, Mr Harold Mitchell, who represents the commercial television industry, welcomed the changes, 'Broadcasters must be able to effectively compete with the giant multinational

79 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5907

80 <https://www.minister.communications.gov.au/minister/mitch-fifield/news/one-nation-support-media-reform-package> <https://www.minister.communications.gov.au/minister/mitch-fifield/news/new-measures-support-regional-media-organisations> <https://www.minister.communications.gov.au/minister/mitch-fifield/news/turnbull-government-working-senate-crossbench-secure-passage-vital-media>

81 <https://www.minister.communications.gov.au/minister/mitch-fifield/news/new-era-australias-media>

82 <https://www.minister.communications.gov.au/minister/mitch-fifield/news/one-nation-support-media-reform-package>

83 <https://www.smh.com.au/business/companies/labor-and-greens-oppose-scrapping-two-out-of-three-rule-20161107-gsjqij.html>

media companies taking advertising dollars out of Australia.⁸⁴ Commercial Radio Australia chief executive officer Joan Warner declared that the changes are 'a positive outcome that will bring Australia's media laws into the digital age and help ensure local media has a chance to compete, evolve and grow'.⁸⁵

Opponents of the reforms argued that removing the 'two out of three' ownership rule would reduce diversity in the media market and therefore be detrimental to the public interest.⁸⁶ Labor senators declared, in a dissenting report on the proposed changes in 2016, that 'removing the two out of three rule will lead to further media consolidation and, consequently, reduce media diversity in Australia' which would come at 'great cost to our democracy'.⁸⁷ Fewer media voices, it was argued, would lead to less democratic scrutiny. Proponents of the reform, however, argued that online news sources has already increased media diversity and that the survival of the media companies would, in the long term, be more important than short term diversity.⁸⁸

Labor did support removing the 75 per cent rule, bolstering local content requirements, and reductions to the commercial broadcast licence fees. The MEAA, the media industry union, declared that the removal of the two out of three ownership rule would mean an 'inevitable loss of diversity in the Australian media'.⁸⁹ MEAA chief executive Paul Murphy welcomed the investment in journalism, but said 'Australia, which already has one of the highest concentrations of media ownership in the world, is now saying that a plurality of media voices doesn't matter. And history shows that once diversity is lost, you cannot get it back.'

84 http://www.freetv.com.au/content_common/pg-broadcasting-reforms-positive-for-aussie-content-and-local-jobs.seo

85 <http://www.commercialradio.com.au/content/mediareleases/2017/2017-09-14-commercial-radio-welcomes-changes-to-me#W49QfJMzZAY>

86 <https://theconversation.com/media-reform-deals-will-reduce-diversity-and-amount-to-little-more-than-window-dressing-83957> <https://theconversation.com/australian-media-at-a-crossroads-amid-threats-to-diversity-and-survival-77314>

87 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/MediaReformBill45/Report/d01

88 <https://www.minister.communications.gov.au/minister/mitch-fifield/news/new-era-australias-media>

89 <https://www.meaa.org/news/media-diversity-and-jobs-to-be-lost-under-reforms/>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The Government has presented evidence, within Senate inquiries as well as the Regulatory Impact Statement, outlining how the changing media landscape, and the associated decline in revenues necessitated reform to the media ownership laws – which were created in an analogue era before the rise of the internet. ¹³
2	Public interest parameters	No	The Government did not appeal to a broad public interest in media reform. The justification appears to have been exclusively related to strengthening the media industry itself, rather than the implications of the policy for the public in general.
3	Consideration of alternatives	Yes	The Regulatory Impact Statement considered various policy alternatives, including (1) no change, (2) repealing ownership rules while leaving television programming rules unchanged; and (3) repealing ownership rules while updating local programming rules (the preferred option). ¹⁴
4	Implementation choices	Yes	The Government is implementing reforms to the media sector using a range of techniques, including changing the ownership rules, reducing licence fees, and grants.
5	Cost-benefit analysis	No	The Government does not appear to have undertaken a full cost-benefit analysis of package of reforms.
6	Policy design framework	No	The Government does not appear to have designed a policy framework including clearly stated measurable outcomes, or a plan for a wholesale review of the impact of changes in ownership rules on the media industry. Though, notably, the legislation does include reviews of taxation arrangements and the operation of the new local programming provisions.
7	Further consultation	No	While the Government did undertake extensive consultation with the media industry, there does not appear to have been wider public consultation on the reforms. ¹⁵
8	Produce green then white paper	No	The Government did not produce a green then white paper to analyse.
9	Develop legislation	Yes	Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 ¹⁶
10	Communication	Yes	The Government articulated the benefits of the reform, consistently referring to the need for reforms to the media regulation in the context of industry changes.
		5/10	

National Energy Guarantee

In October 2017, former Prime Minister Malcolm Turnbull announced the National Energy Guarantee (NEG).⁹⁰ The original NEG design included both a 'reliability guarantee' that necessitates the delivery of energy from 'ready-to-use sources such as coal, gas, pumped hydro and batteries', and an 'emissions guarantee' to meet Australia's international commitments, specifically an emissions reduction target for the electricity sector of 26 per cent by 2030 on 2005 levels. The scheme did not include subsidies and incentives, and was 'technologically neutral,' however due to the emissions target and fines on retailers that didn't meet their emissions reduction obligations, the scheme would continue to favour renewable sources.

The NEG replaced the previous government policy, a Clean Energy Target, which explicitly mandated the use of low emissions technology.⁹¹ The government claimed that 'The National Energy Guarantee will lower electricity prices, make the system more reliable, encourage the right investment and reduce emissions without subsidies, taxes or trading schemes.'⁹² The government claimed, according to research released with the NEG, that energy prices would fall by an average of \$110-\$115 per year over the 2020-2030 period.

The NEG was recommended to the government by the independent Energy Security Board (ESB), an entity that was created following the Finkel Review. The 2016-17 Finkel Review, the Independent Review into the Future Security of the National Electricity Market completed by chief scientist Alan Finkel, recommended the ill-fated Clean Energy Target.⁹³ In the context of rising energy prices and blackouts in South Australia, concerns were raised, particularly within the Coalition party room, about the lack of focus on reliability and cost.⁹⁴ In response, the government worked with the Energy Security Board to develop a new proposal that sought to balance the myriad policy objectives. The Board recommended the NEG, claiming it would deliver reliability, reduce emissions, and lower costs.⁹⁵ The final design of the policy was presented to states and the federal government in August 2018, following an earlier draft paper and consultation process on the details of the policy design.⁹⁶

Business groups welcomed the NEG bringing certainty to government policy on climate change. The Business Council of Australia supports the NEG, called for states and territories to abandon their schemes, and stated that 'The guarantee is a platform for a durable, bipartisan, national emissions reduction policy that can achieve our committed international targets at lowest possible cost while maintaining our competitiveness.'⁹⁷ The Australian Chamber of Commerce and Industry broadly supported the proposals, though raised concerns that large energy users would be responsible for their share of the reliability obligation by default, exposing them to additional costs.⁹⁸ Energy retailers, represented by Energy Australia, said that the emissions burden should be

90 <https://www.malcolmturnbull.com.au/media/national-energy-guarantee-to-deliver-affordable-reliable-electricity>

91 <http://www.abc.net.au/news/2017-06-09/finkel-energy-report-explained/8602524>

92 <https://www.malcolmturnbull.com.au/media/national-energy-guarantee-to-deliver-affordable-reliable-electricity>

93 <https://www.energy.gov.au/government-priorities/energy-markets/independent-review-future-security-national-electricity-market>

94 <http://www.abc.net.au/news/2017-10-17/coalition-signs-off-on-new-energy-plan-to-replace-cet-proposal/9057026>

95 <http://www.coagenenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Report%20on%20the%20National%20Energy%20Guarantee.pdf>

96 <http://www.coagenenergycouncil.gov.au/publications/energy-security-board-national-energy-guarantee-consultation-paper> <http://www.coagenenergycouncil.gov.au/publications/initial-design-guarantee> http://www.coagenenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20Detailed%20Design%20-%20National%20Energy%20Guarantee_1.pdf

97 <https://www.afr.com/news/politics/business-council-of-australia-backs-turnbulls-national-energy-guarantee-20180312-h0xd3u>

98 <https://www.theaustralian.com.au/national-affairs/big-power-users-eye-national-energy-guarantee-deal/news-story/8447ec97c4c32a802dbb732b40ecdb98>

on generators of electricity, not the retailers.⁹⁹ Meanwhile, smaller retailers raised concerns that the RET would entrench the market power of larger generators and retailers.¹⁰⁰

The NEG was criticised by advocates for both more and less action on climate change. The Climate Council said that the ‘NEG emissions proposal is a woefully inadequate response to the urgent threat of climate change’ and advocated for a reduction of emissions in the electricity sector by at least 60 per cent.¹⁰¹ The Victorian Government raised concerns that the NEG showed ‘a lack of ambition’ in cutting emissions.¹⁰² Other opponents objected to the existence of an emissions reduction target in the first place. Former Prime Minister Tony Abbott said that the NEG is ‘bad policy’ because it ‘won’t bring prices down’.¹⁰³ In the final week of his prime ministership, Turnbull abandoned the intention to legislate for an emissions target as part of the NEG in response to opposition within the Coalition party room.¹⁰⁴ Prime Minister Scott Morrison has abandoned the NEG, and declared the primary priority is lower prices.¹⁰⁵

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The Government appealed to both analysis within the Finkel Review and subsequent analysis by the Energy Security Board to establish the need for a new energy policy that balances various demands on government policy.
2	Public interest parameters	Yes	The Government appealed to joint public interests in securing reliability, meeting emissions reduction targets and minimising costs within the energy sector. It is notable, however, that these public interests could be contradictory.
3	Consideration of alternatives	Yes	The Government did consider various policy alternatives through the Finkel Review process and the Energy Security Board. Notably, however, inaction was not considered as an alternative.
4	Implementation choices	Yes	The Government, through the Energy Security Board, has considered methods to implement the NEG in various technical papers and consultation on the regulatory impact statement. ¹⁷
5	Cost-benefit analysis	No	The Government does not appear to have undertaken a cost-benefit analysis of the NEG.
6	Policy design framework	Yes	The Government’s published issue, consultation and design principles papers included a framework for implementing the policy.
7	Further consultation	Yes	The Government, through the Energy Security Board, undertook further public consultation in early 2018 on the design of the NEG. ¹⁸
8	Produce green then white paper	No	The Government has not produced a green then white paper on Australia’s energy market.
9	Develop legislation	No	The Government did not release legislation which enacts the NEG.
10	Communication	Yes	The Government clearly stated the nature and intention of the NEG in public communications.
		7/10	

99 <https://www.afr.com/news/politics/turnbulls-national-energy-guarantee-has-serious-flaws-says-big-energy-retailers-20180311-h0xb7q>

100 <https://www.afr.com/news/politics/turnbulls-national-energy-guarantee-could-have-dire-consequences-for-energy-market-20180307-h0x6o7>

101 <https://www.climatecouncil.org.au/uploads/a9cc46d55d6b05b957c8dcd32ef436b8.pdf>

102 <https://www.theguardian.com/australia-news/2018/jul/31/victoria-not-satisfied-with-energy-plans-emissions-reduction-target>

103 <https://www.theguardian.com/australia-news/2018/aug/08/victoria-asks-frydenberg-to-get-emissions-target-passed-before-energy-deal>

104 <http://www.abc.net.au/news/2018-08-20/cabinet-ministers-admit-disunity-amid-turnbull-dutton-spill-talk/10138850>

105 <https://www.theaustralian.com.au/national-affairs/climate/national-energy-guarantee-dead-as-morrison-sets-new-course/news-story/1e0db1f87ba30117317cdcc24f537a88>

New South Wales

Abolition of greyhound racing

In July 2016, the NSW Government announced an immediate ban of greyhound racing. Premier Mike Baird claimed that the ‘widespread and systemic mistreatment of animals’ must come to an end.¹⁰⁶ This ban followed public attention on the issue of animal mistreatment, and a special commission which recommended the NSW Government reconsider the continuation of the industry.

The impetus for the policy was a February 2015 episode of ABC’s Four Corners that showed mass killings of greyhound dogs and the use of illegal ‘live bait’ in the greyhound racing industry.¹⁰⁷ ‘Live bait’ refers to the practice of catapulting other animals, such as possums and rabbits, around tracks while being chased and eventually killed by the greyhound dogs. There were cases where ‘live bait’ was used to train greyhounds.

In response to the news report the NSW Government established a Special Commission of Inquiry into the Greyhound Racing Industry in NSW which reported in June 2016. This followed a series of earlier parliamentary and governmental reviews of the industry.¹⁰⁸ The Commission undertook an extensive consultation process, including 151,000 pages of evidence, 115 hours of videos, and 804 submissions (3,875 pages). The Commission also heard from 43 witnesses over 11 days of private hearings and 26 witnesses over ten days of public hearings. The Commission found substantial evidence of killings in the greyhound industry as well as live baiting, and misreporting of dog deaths and injuries.

The Commission argued that businesses require a ‘social licence’ to operate, that is, community expectations should determine whether businesses should operate. The Commission, whose stated primary concern was animal welfare, concluded that the industry was incapable of reforming. The Commission’s first and primary recommendation was that ‘the Parliament of New South Wales should consider whether the industry has lost its social licence and should no longer be permitted to operate in NSW’.

While animal rights groups supported the ban, there were serious questions raised by the greyhound industry and regional communities which enjoy both economic benefits and enjoyment from greyhound racing. There was protests against the ban, including one attended by thousands in Sydney’s Hyde Park.¹⁰⁹

106 <http://www.abc.net.au/news/2016-07-07/greyhound-racing-to-be-banned-in-new-south-wales/7576816>

107 <http://www.abc.net.au/4corners/stories/2015/02/16/4178920.htm>

108 https://www.greyhoundracinginquiry.justice.nsw.gov.au/Documents/NSW_Government_response_to_Select_Committee_first_report.pdf https://www.greyhoundracinginquiry.justice.nsw.gov.au/Documents/Select_Committee_on_GR_NSW_Second_Report_-_16_October_2014.pdf https://www.greyhoundracinginquiry.justice.nsw.gov.au/Documents/5_Year_Statutory_Review_of_the_Greyhound_Racing_Act-Review_Report-May_2015.pdf

109 <https://www.youtube.com/watch?v=K9WH20x0Df8>

Opponent of the ban, Daily Telegraph columnist Miranda Devine, wrote that 'You don't have to have been to a dog race to recognise the authoritarian overreach of the greyhound ban, or oppose government victimisation of powerless battlers':

Under the guise of animal welfare, the ban attacks decent, law-abiding people who love their dogs and whose lives revolve around the friendship, purpose, identity, and community bonds that the working class sport of greyhound racing provides. Without greyhounds, for many, life is not worth living.¹¹⁰

Following the industry and regional community opposition to the ban, the NSW government reversed course in October 2016 and announced that the industry would be allowed to continue to operate – in conjunction with a series of animal welfare changes that would lead to fewer races and tracks. These changes included the creation of a new integrity commission, lifetime bans for live baiting and other malpractice, and improved registration tracking for dogs. Premier Baird declared that the industry deserved a second chance and the opportunity to reform and that 'I got it wrong, the Cabinet got it wrong, the Government got it wrong'.¹¹¹

The change came just a month after the head of the body responsible for implementing the ban, John Keniry, attempted to resign from the post. Keniry wrote, in a letter subsequently revealed through a Freedom of Information request, that:

I have come to the view that many people and businesses will be adversely affected, in ways that cannot be adequately dealt with by the transitional arrangements the taskforce might recommend.

In my view, too many people who own just a few dogs and for whom racing is a lifestyle, as well as many small businesses which supply services to the greyhound industry, will be adversely affected with potentially serious impacts on the emotional wellbeing of them and their families.¹¹²

110 <https://www.dailytelegraph.com.au/rendezview/admit-it-mike-baird-the-greyhound-racing-ban-has-been-a-terrible-mistake/news-story/dee245be9d2a15811c24a0a3b3d4c038>

111 <http://www.abc.net.au/news/2016-10-11/greyhound-ban-baird-government-confirms-backflip/7921000>

112 <https://www.dailytelegraph.com.au/news/nsw/nsw-greyhound-ban-resignation-letter-triggered-bairds-dogs-backflip/news-story/83e12b76fd1b74d983fcc6a287dad0e3>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The NSW Government referred to the evidence of issues with animal welfare in the greyhound racing industry as exposed by the Commission and ABC Four Corners.
2	Public interest parameters	No	The NSW Government's stated 'public interest' in ending the industry to protect the animals, however this narrow definition of the public interest does not appear to have taken into account the impact on the racing industry and regional communities. The ultimate decision to reverse course indicates that the initial animal welfare interest was not balanced against a wider public interest.
3	Consideration of alternatives	Yes	The Commission report outlined a range of alternatives to the ban for improving animal welfare in the greyhound racing industry; these alternatives ultimately helped guide the reforms undertaken by the Baird Government.
4	Implementation choices	No	The NSW Government does not appear to have assessed the potential mechanisms for implementing the policy, from incentives to coercion.
5	Cost-benefit analysis	Yes	The Commission report did include a formal cost-benefit analysis of the benefits of the industry to the NSW economy.
6	Policy design framework	No	The NSW Government does not appear to have designed a framework for the policy, outlining stages of implementation or a review and audit, prior to announcing the ban. This is confirmed by Keniry's unaccepted resignation letter, which noted that the policy was creating issues for regional communities that was not considered.
7	Further consultation	Yes	The NSW Government responded to the special commission report by announcing an immediate ban, without first consulting with the greyhound industry. Nevertheless, further consultation was undertaken before the policy was fully implemented, leading to a policy reversal.
8	Produce green then white paper	Yes	While they were not formally labelled a 'Green' and 'White' paper, the Commissions did release two issue papers (October 2015 and December 2015) and a final report (June 2016), effectively the same process. ¹⁹
9	Develop legislation	Yes	There was legislation developed which initially banned the industry, and subsequent legislation which reversed the ban. ²⁰
10	Communication	Yes	The NSW Government clearly communicated the intention of the ban and the basis for protecting animal welfare, as well as how the reversal was necessary following reconsideration.
		7/10	

Criminal justice reforms

In October 2017, the NSW Parliament legislated a package of reforms to the criminal justice system.¹¹³ The 'Tough and smart justice – safer communities' reforms had four parts:

- Sentencing: The abolition of suspended sentences in favour of correction orders supervised by 200 new Community Corrections Officers;¹¹⁴
- High risk offender management: Stricter parole decision making for high-risk sex and violent offenders, increased victim consultation, and focus on reforming offenders;¹¹⁵
- Early guilty pleas: Encouragement of earlier guilty pleas for faster justice that reduces victim stress, minimises costs and police time spent compiling briefs of evidence,¹¹⁶ and
- Stronger parole: refusal of parole for murderers who have not revealed the location of a victim's remains, revoking of parole for those dangerous to the community, allow for 6 months supervised reintegration home detention, a stronger voice for victims, harsher sanctions for parole breaches, and improved supervision.¹¹⁷

The NSW Government committed \$200 million to implement the reforms, primarily to fund Community Corrections Officers to supervise offenders. The NSW Government claimed that the reforms would 'enable faster, more certain justice, helping victims and strengthening protection of the community.'¹¹⁸ NSW Police Minister Troy Grant said that 'These reforms are great news for our communities. A tough and smart approach to reducing reoffending will mean less crime and fewer victims.'¹¹⁹ A further set of reforms to how the criminal justice system addresses people with cognitive and mental health impairments was introduced in 2018.¹²⁰

The changes, announced in May 2017, were built on multiple extended reviews by the NSW Law Reform Commission (NSWLRC) and a review of the high risk offenders scheme.¹²¹ In 2011-13, the NSWLRC reviewed sentencing.¹²² The two year review included 12 discussion papers, 20 preliminary and 56 final submissions, extensive analysis of crime patterns and statistics, an interim report and a final 501 page report including dozens of recommendations.¹²³ In 2013-15, the NSWLRC parole system review included 6 discussion papers, a scoping paper, and a final 499 page report which similarly contained dozens of recommendations. In 2013-15, the NSWLRC reviewed how to encourage early guilty pleas, which also included a consultation paper, 25 submissions, and a 391 page report.¹²⁴ In 2016-17, the Department of Justice reviewed the Crimes (High Risk Offenders) Act 2006 (NSW) including amendments made since 2013.¹²⁵ The statutory review included 28 recommendations on eligibility, order making, offender management, and scheme administration.

113 <https://www.justice.nsw.gov.au/reform>

114 <https://www.justice.nsw.gov.au/Documents/Reforms/parole-factsheet.pdf>

115 <https://www.justice.nsw.gov.au/Documents/Reforms/high-risk-offenders-factsheet.pdf>

116 <https://www.justice.nsw.gov.au/Documents/Reforms/early-guilty-pleas-factsheet.pdf>

117 <https://www.justice.nsw.gov.au/Documents/Reforms/sentencing-factsheet.pdf>

118 <https://www.justice.nsw.gov.au/Documents/Media%20Releases/2017/criminal-justice-reforms-pass-parliament.pdf>

119 <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/safety-first-justice-reforms-enter-parliament.aspx>

120 <https://www.justice.nsw.gov.au/Documents/Reforms/Forensic-mental-health-reforms-factsheet.pdf>

121 <https://www.justice.nsw.gov.au/Documents/Reforms/informed-reforms-factsheet.pdf>

122 http://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_completed_projects/lrc_sentencingcurrentprojects/lrc_sentencingcurrentprojects.aspx

123 <http://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-139.pdf>

124 http://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_completed_projects/lrc_encouragingearlyappropriateguiltypleas/lrc_encouragingearlyappropriateguiltypleas.aspx

125 https://www.justice.nsw.gov.au/justicepolicy/Pages/lpclrld/lpclrld_consultation/review-extension-crimes-high-risk-offenders-act-2006.aspx

Following the announcement of the intention to legislate the changes the NSW government undertook further consultation with victims advocacy groups, law enforcement stakeholders, the judiciary and the legal profession.¹²⁶ This included a series of roundtables with representative groups, meetings with victims of crime, the reviewing of more than 100 written submissions.

The response to the reforms was for the most part positive, though some concerns were raised about specific elements. Andrew Bushnell of the Institute of Public Affairs welcomed the reforms 'which will improve community safety and have the potential to save taxpayers money in the longer term'.¹²⁷ Bushnell welcomed the replacement of suspended sentences with improved community-based punishments, and changes to parole breach punishments. Former Supreme Court judge Anthony Whealy, QC, who developed the NSWLRC report on early guilty pleas welcomed the changes.¹²⁸ Whealy noted that the District Court was 'overwhelmed with work' and that 'Unless you have systemic change these delays are going to get worse and worse. These changes are systemic.' NSW Bar Association senior vice-president Arthur Moses raised concerns about fixed discounts leading to inconsistent justice.¹²⁹ NSW Law Society president Pauline Wright welcomed changes that encourage early guilty pleas, but raised objections to abolishing committal hearings.¹³⁰ Associate Professor Julia Quilter of the University of Wollongong welcomed changes to reintegrate offenders into the community, but voiced opposition to parts of the parole system changes.¹³¹

126 <https://www.justice.nsw.gov.au/Documents/Reforms/informed-reforms-factsheet.pdf>

127 <https://ipa.org.au/ipa-today/ipa-new-south-wales-governments-bold-criminal-justice-reforms-will-improve-community-safety#>

128 <https://www.smh.com.au/national/nsw/former-judge-backs-plan-to-stem-tsunami-of-criminal-cases-in-nsw-20170510-gw18q1.html>

129 <https://www.smh.com.au/national/nsw/former-judge-backs-plan-to-stem-tsunami-of-criminal-cases-in-nsw-20170510-gw18q1.html>

130 <https://www.smh.com.au/national/nsw/former-judge-backs-plan-to-stem-tsunami-of-criminal-cases-in-nsw-20170510-gw18q1.html>

131 <https://www.smh.com.au/national/nsw/former-judge-backs-plan-to-stem-tsunami-of-criminal-cases-in-nsw-20170510-gw18q1.html>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The various NSW Law Reform Commission reviews and High Risk Offenders Scheme Review provided a substantial evidential basis for the NSW criminal justice reforms.
2	Public interest parameters	Yes	The NSW Government appealed to the public interest in reducing reoffending, improving community safety, and supporting victims.
3	Consideration of alternatives	Yes	The various Government reviews, that provide a basis for the criminal justice reforms, considered a plethora of alternatives for improving the criminal justice system.
4	Implementation choices	Yes	The various Government reviews, that provide a basis for the criminal justice reforms, considered various mechanisms for implementing changes to the criminal justice system.
5	Cost-benefit analysis	No	The NSW Government does not appear to have undertaken a formal cost-benefit analysis of the criminal justice reforms, for example, attempting to calculate the expected reduction in crime and savings to the community in monetary and non-monetary terms.
6	Policy design framework	Yes	The reforms are being progressively implemented by the justice system, following an extended process that has been outlined and developed including ongoing reviews. ²¹
7	Further consultation	Yes	The NSW Government undertook further consultation between the May policy announcement and October legislation of the changes, and modified the original proposals based on feedback from stakeholders. ²²
8	Produce green then white paper	Yes	While there was not a specific green and white paper for the entire package of reforms, each individual part of the reform included a review with a discussion paper (a green paper) and a final set of recommendations (a white paper).
9	Develop legislation	Yes	Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 201723 Justice Legislation Amendment (Committals and Guilty Pleas) Bill 201724 Crimes (High Risk Offenders) Amendment Bill 201725
10	Communication	Yes	The NSW Government's messaging and information campaign was clear and succinct – focused on being both tough and smart – that minimised community concern about the suite of changes. This is a substantial achievement in the often heated sphere of criminal justice.
		9/10	

Emergency Services Levy

In 2015, the then-NSW Treasurer Gladys Berejiklian announced the NSW government would replace the Emergency Services Levy, a levy paid on insurance, with a land-based Fire and Emergency Services Levy.¹³² The new annual levy would include a fixed charge of \$100 for residential property and \$200 for commercial; and an ad valorem amount calculated from the unimproved land value. There would be special arrangements for 'public benefit land' such as churches and scout halls. The total amount raised through the levy would vary annually based upon the budget for fire and state emergency services. The NSW government also appointed an Emergency Services Levy Insurance Monitor to oversee insurers passing along savings to consumers.

The NSW government claimed that the revenue neutral scheme was fairer because all property owners would be required to pay – not just those who purchased insurance. Berejiklian stated that 'This fairer model for funding fire and emergency services will reduce the cost of insurance and encourage more people to insure their properties.'¹³³ The new tax would require the estimated one third of NSW property owners who do not insure to pay for the cost of emergency services. In March 2017, the NSW government estimated that the average fully insured homeowner would save \$47 a year under the new scheme.¹³⁴ This was on the basis of the levy reduction on motor insurance and home and contents insurance.

This policy follows multiple reviews that, in all but one case, recommended transitioning from an insurance-based levy to property-based levy for fire services. The Royal Commission report on the failure of the HIH Insurance Group, tabled in 2003, recommended that states 'abolish fire service levies on insurers.'¹³⁵ A 2003-04 NSW parliamentary inquiry, however, concluded that the existing system should be improved and not abolished.¹³⁶ The NSW Independent Pricing and Regulatory Tribunal recommended that the fire levy on insurance should be abolished as part of a review of state taxation in 2007-08, noting that the fire services levy is the least efficient state tax.¹³⁷ The Henry Tax Review, released in 2010, recommended the abolition of a fire services levy on insurance.¹³⁸ The analysis accompanying the Review found that insurance-based levies are 'the least efficient State taxes' and concluded that insurance products should only be subject to consumption taxes.¹³⁹ Victoria and Tasmania subsequently implemented this recommendation.

In July 2012, the NSW Government released a Funding our Emergency Services discussion paper to seek community feedback on developing 'a better, fairer and more efficient' funding scheme, with a view to introducing a land-based tax.¹⁴⁰ This review considered the appropriate method to fund fire and emergency services and various methods to introduce a property based levy, including comparisons to other states and territories. Then-Treasurer Mike Baird said that 'The current system has serious weaknesses and is economically inefficient. Taxing insurance increases

132 <https://www.smh.com.au/national/nsw/ratepayers-to-pay-new-emergency-services-levy-but-insurance-costs-to-fall-20151210-gljzwe.html>

133 <https://www.smh.com.au/national/nsw/ratepayers-to-pay-new-emergency-services-levy-but-insurance-costs-to-fall-20151210-gljzwe.html>

134 <https://www.treasury.nsw.gov.au/sites/default/files/2017-03/20170307%20-%20Media%20Release%20-%20Perrottet%20-%20Fairer%20Funding%20for%20Fire%20and%20Emergency%20Services.pdf>

135 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/hihinurance

136 <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2001>

137 <https://www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Taxation/Review-of-State-Taxation>

138 http://taxreview.treasury.gov.au/content/downloads/final_report_part_1/00_AFTS_final_report_consolidated.pdf

139 http://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_2_Consolidated.pdf

140 <https://www.ocn.org.au/sites/default/files/documents/NSW%20Treasury%20-%20Emergency%20Services%20Levy%20Discussion%20Paper%20July%202012.pdf> <https://www.treasury.nsw.gov.au/sites/default/files/mediarelease/20120705---Media---NSW-Government-to-move-to-a-better-way-of-funding-Emergency-Services.pdf>

the price of insurance and can lead some people to under-insure and others not to insure at all.¹⁴¹ This followed an election commitment by the NSW Liberals & Nationals at the 2011 election to review the system. In 2013, Baird announced that Allan Fels would report to the NSW government on the implementation of Victoria's experience of the Fire Services Levy – however, it does not appear that this report was publicly released.¹⁴²

Opponents to the property-based levy argued that it would hurt poorer families who cannot afford insurance and would see their rates increase, and would unfairly benefit big businesses who would pay less. The Fire Brigade Employees Union opposed the 'billion-dollar tax on property owners that will cost many NSW households hundreds of dollars more'.¹⁴³ The new levy was welcomed by the Insurance Council of Australia who said that it would bring NSW into alignment with all other states and territories.¹⁴⁴

The change was legislated in early March 2017.¹⁴⁵ Substantial opposition to the scheme mounted following the release of a calculator in early May 2017. This calculator revealed that many residential and commercial property owners would be required to pay double or triple levy than in the past.¹⁴⁶ A few weeks later the NSW government announced that the introduction of the levy would be deferred 'to ensure small to medium businesses do not face an unreasonable burden in their contribution to the State's fire and emergency services'.¹⁴⁷

The NSW government acknowledged that the modelling of costs under the new levy system did not match the reality for commercial property, and declared the need to undertake further consultation before proceeding. NSW Treasury subsequently admitted that there were substantial risks and data limitations in calculating the levy, and this was a key reason for the government backing down on the policy.¹⁴⁸ The collection of the levy has now reverted to the collection via insurance policies, and the NSW government has not proceeded with the policy. Insurers have objected to the policy reversal, warning that uncertainty and technical challenges would lead to increased premiums.¹⁴⁹

141 <https://www.treasury.nsw.gov.au/sites/default/files/mediarelease/20120705---Media---NSW-Government-to-move-to-a-better-way-of-funding-Emergency-Services.pdf>

142 <https://members.nsw.liberal.org.au/news/state-news/allan-fels-report-emergency-services-funding>

143 <https://www.smh.com.au/national/nsw/revealed-what-you-will-pay-under-the-new-fire-services-levy-20170428-gvumk1.html>

144 http://www.insurancecouncil.com.au/assets/media_release/2017/12052017_The%20Emergency%20Services%20Levy%20transition%20%20key%20facts.pdf

145 <https://www.treasury.nsw.gov.au/sites/default/files/2017-03/20170307%20-%20Media%20Release%20-%20Perrottet%20-%20Fairer%20Funding%20for%20Fire%20and%20Emergency%20Services.pdf>

146 <https://www.smh.com.au/national/nsw/revealed-what-you-will-pay-under-the-new-fire-services-levy-20170428-gvumk1.html> <https://www.smh.com.au/national/nsw/a-blunt-instrument-sydney-property-owners-unfair-tax-hike-20170430-gvmda.html> <https://www.smh.com.au/national/nsw/its-a-shambles-cabinet-considering-fire-levy-changes-amid-furore-20170524-gwbyax.html> <https://www.theaustralian.com.au/national-affairs/state-politics/gladys-berejiklian-dumps-plan-to-force-councils-to-collect-fire-and-emergency-services-levy/news-story/ceb6cb8928723dd66b820a8052567e89>

147 <https://www.treasury.nsw.gov.au/sites/default/files/2017-05/30052017%20-%20Media%20Release%20-%20Berejiklian%20and%20Perrottet%20-%20Fire%20and%20Emergency%20Services%20Levy%20to%20be%20reviewed%20to%20ensure%20fairness.pdf>

148 <https://www.news.com.au/national/breaking-news/treasury-fronts-inquiry-over-nsw-fire-levy/news-story/610b5e7e1fe443cbcf1b452a929ba368>

149 <https://www.smh.com.au/national/nsw/new-nsw-fire-services-levy-delayed-after-furore-20170530-gwg464.html>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	There is substantial evidence, established by the 2012 discussion paper, 2010 Henry Tax Review, 2008 Independent Pricing and Regulatory Tribunal, 2003 Royal Commission report on the failure of the HIH Insurance Group, and interstate experience, that the existing emergency levy scheme is an inequitable and inefficient way to fund fire services. This is because it (1) allows for 'free riding' by the uninsured and (2) higher premiums lead to underinsurance.
2	Public interest parameters	Yes	The NSW government appealed to the public interest in fire services funding reform that would deliver a more efficient and equitable system.
3	Consideration of alternatives	Yes	The NSW government did, in the 2012 discussion paper, consider various alternatives for a fire services levy scheme based on property levies.
4	Implementation choices	Yes	The NSW government did, in the 2012 discussion paper, consider a range of options for implementing the policy change including transitional arrangements.
5	Cost-benefit analysis	No	The NSW government claimed that there would be a net benefit for the average household under the new policy, however, the modelling behind this claim was not released, and there were subsequent questions raised about the calculations behind the model that are linked to the policy reversal.
6	Policy design framework	No	The NSW government does not appear to have designed a framework for the policy, outlining stages of implementation or a review and audit.
7	Further consultation	No	It is not clear what consultation the NSW government undertook between the announcement of the scheme in 2015, and the legislation in 2017.
8	Produce green then white paper	No	While there was a discussion paper (green paper) in 2012, the NSW government did not publish a final white paper with policy conclusions.
9	Develop legislation	Yes	The NSW government developed legislation to both introduce and withdraw the levy, see Fire and Emergency Services Levy Act 2017. ²⁶ This followed a review by the Legislative Review Committee supported by the NSW Opposition. ²⁷
10	Communication	No	The NSW Government failed to clearly communicate the cost of the new levy on each household, largely interrelated to acknowledged issues with modelling estimates. The Treasurer acknowledged that the 'complex' policy had 'challenges in the transition phase'. ²⁸
		5/10	

Local council amalgamations

In December 2015, the New South Wales government announced plans to reduce the total number of councils from 152 to 112 by forcing smaller councils to amalgamate into larger entities.¹⁵⁰ Premier Mike Baird justified the mergers on financial necessity, pointing out that two-thirds of councils are in deficit, and that to cover their expenditures rates would need to increase by a third. The mergers were intended to reduce debt and the high number of council workers per capita, and allow for the streamlining of services and equipment to achieve cost savings. The amalgamations were supported by the Sydney Business Chamber, who said that it would be easier for business to operate in fewer jurisdictions. However, the amalgamations were strongly opposed by many affected councils, particularly in regional areas, and the Labor opposition. The opposition to mergers was strongest in areas with a 'long history and a strong local identity,' that locals felt would be undermined by the amalgamations.¹⁵¹

In 2016, the NSW government, by proclamation, amalgamated 45 existing councils into 20 new councils, after abandoning some initial mergers and pending legal action against a range of other proposed mergers. Each new council was provided \$10 million for merging costs, and up to \$15 million for community infrastructure. Local representatives were dismissed and replaced by interim general managers and elections suspended until September 2017.¹⁵² 'Implementation Advisory Groups,' made up of former councillors and mayors, were created for each new council to determine how the councils would merge in practice.

The council mergers policy process began under from former Premier Barry O'Farrell, who declared support for voluntary mergers, the policy of Baird at the 2015 election, and began a series of reviews on the matter. The most prominent was the Independent Local Government Review Panel released in 2013. In addition, the NSW Legislative Council undertook a parliamentary inquiry in 2015, and the Independent Pricing and Regulatory Tribunal (IPART) did a review in 2015.¹⁵³ Despite these earlier reports, which recommended extensive community consultation to build support to minimise community opposition, the NSW Government primarily relied on a report by KPMG.

The KPMG report highlighted the potential for \$2 billion in cost savings over 20 years from amalgamations, however it did appear to account for submissions to previous reviews and was never released in full to the public – leading to claims of errors and overestimating of the benefits.¹⁵⁴ Some analysts claimed that previous amalgamations did not lead to an efficiency dividend.¹⁵⁵ The refusal to fully release the report raised concerns about the capacity for the public and policymakers to fully assess the merger proposals. In one case appealed to the courts, the amalgamation of Ku-ring-gai and Hornsby Councils, the judge found that a delegate appointed to undertake the merger could not have properly undertaken their assessment without access to the full KPMG report, and that releasing the report was in the public interest.¹⁵⁶

150 <https://www.dailytelegraph.com.au/newslocal/city-east/council-mergers-premier-mike-baird-gives-metro-councils-10m-sweetener-and-regionals-5m/news-story/e5bfd9dab0a99649d787621fa9181a55>

151 <https://www.smh.com.au/national/nsw/council-amalgamations-the-good-the-bad-and-the-ugly-20150625-ghxz1u.html>

152 <https://www.smh.com.au/national/nsw/nsw-council-amalgamations-announced-by-premier-mike-baird-20160512-gotczo.html>

153 <https://web.archive.org/web/20160201042107/http://www.localgovernmentreview.nsw.gov.au/Information.asp?areaindex=LGR&index=102&mi=9> <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1825#undefined> <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Fit-for-the-future/Review-of-Local-Council-Fit-For-The-Future-proposals>

154 <https://www.smh.com.au/national/nsw/crucial-report-into-council-mergers-not-held-by-council-minister-department-20170524-gwca8d.html> <https://www.smh.com.au/national/nsw/council-amalgamation-report-awash-with-errors-20160124-gmcsri.html>

155 <https://theconversation.com/do-mergers-make-for-better-councils-the-evidence-is-against-bigger-is-better-for-local-government-56813>

156 <https://www.smh.com.au/national/nsw/blow-to-berejiklian-governments-council-mergers-as-court-rules-against-kpmg-report-secrecy-20170327-gv754p.html>

There was substantial community opposition to council changes. A Local Government New South Wales commissioned poll in June 2015 which found that just 18 per cent of the community supported 'Mega Councils' and 60 per cent supported no changes whatsoever.¹⁵⁷ Lynsey Blayden of UNSW Law School has written that the process adopted by the NSW Government 'exacerbated the backlash'. This includes the decision to force councils to amalgamate, the lack of community consultation and case-by-case analysis, and the secrecy of the process particularly in relation to the KPMG report.¹⁵⁸

University of Technology Sydney Professor Graham Sansom, who led the 2013 independent review, concluded that 'I think you can say with some fairness that pretty much everything they could get wrong they did get wrong. The merger process has unquestionably been a disaster'.¹⁵⁹ Sansom, and Professor Roberta Ryan also of University of Technology Sydney, noted that the government failed to outline benefits and objectives beyond financial savings, the process lacked transparency, and the government failed to listen to concerns about local community impacts or communicate a consistent merger message. There were also issues raised by the hasty organisation of public hearings, the number of sacked councillors, and the delay of elections.

The unpopularity of council amalgamations was cited as a key reason for the Nationals losing the Orange by-election to the Shooters and Fishers Party, mediocre results for the Liberals in the September 2017 council elections, and the decision by Mike Baird to step down as premier.¹⁶⁰ In February 2017, Gladys Berejiklian, who became Premier weeks earlier following Baird's resignation, announced the abandonment of further proposals for regional amalgamations. In July 2017, Berejiklian announced that the government would not proceed with the remaining metropolitan council amalgamations.

157 <https://www.govnews.com.au/amalgamations-unpopular-with-the-locals/>

158 <https://auspublaw.org/2017/11/council-amalgamations-in-nsw/>

159 <https://www.governmentnews.com.au/forced-council-mergers-nsw-government-got-wrong/>

160 <http://www.abc.net.au/news/2017-09-10/nsw-local-council-election-results/8889752>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The NSW Government undertook a series of reviews that established the need to improve council structure and efficiency. Nevertheless, it should be noted, that the final report which was the basis for the amalgamations, developed by KPMG, was never released in full to the public or accessible to public servants implementing the program, and hence the evidential basis for the changes is difficult to fully establish. It is also not clear that there was a need to force councils to amalgamate rather than a voluntary process.
2	Public interest parameters	No	There does appear to have been a clear public interest in improving the efficiency of local councils, however the NSW Government failed to clearly articulate the overall benefits and objectives beyond the potential cost savings. This was also not weighed against the importance of local community identity, particularly for outer suburban and regional areas.
3	Consideration of alternatives	No	The earlier reviews considered alternative methods to improve council structure and operation, however the NSW Government did not appear to weigh up alternatives at the time of making their final decision to require councils to merge. The decision was delivered as a fait accompli.
4	Implementation choices	No	The method of how to implement the changes was not fully developed in advance of the announcement of the decision. It is not clear why they were made mandatory, and the specific incentives, such as additional funding, were made post initial announcement after public backlash.
5	Cost-benefit analysis	No	While the KPMG report did calculate the potential benefits of an amalgamation this analysis was both not released publically, and potential costs, such as to community cohesion and identity, do not appear to have been weighed up against the potential cost savings. It is not clear whether risks and what risks were accounted for.
6	Policy design framework	No	The policy of amalgamations appears to have been pursued on an ad-hoc basis, with a lack of strategy and proper administrative process. For example, there was not a process planned in advance for assessing and reporting the success or failure. It was determined by the NSW Court of Appeal that the NSW Government failed to undertake proper administrative process in and therefore mergers were not in accordance with legislation. ²⁹
7	Further consultation	Yes	The NSW Government undertook community consultation following the announcement of the policy, however this could be criticised as part of a PR campaign rather than a consultation that could change the outcomes.
8	Produce green then white paper	No	The NSW Government has not produced a green or white paper.
9	Develop legislation	No	The final decision to merge the councils was undertaken by proclamation, not specific legislation. ³⁰
10	Communication	Yes	The NSW Government clearly communicated in a media release the intended local council changes. ³¹
		3/10	

Queensland

Legalisation of ride sharing

In August 2016, the Queensland Government announced that ride sharing services, including Uber, would be legalised and regulated, in addition to a \$100 million assistance package for the taxi industry. Transport Minister Stirling Hinchliffe declared that 'The Palaszczuk Government is committed to ensuring Queenslanders have access to safe, reliable and affordable personalised transport services and these changes will drive competition, deliver cheaper fares and pave the way for more transport options for Queenslanders.'¹⁶¹

Uber first began operating in Brisbane in April 2014. The previous Liberal National Party Government responded by instigating a cease and desist order against Uber for providing an unlicensed taxi service.¹⁶² However, the government was unable to prevent the service operating in practice. Uber paid for drivers' fines and blocked inspector access to the service.¹⁶³ Within 18 months of launching, Uber had 4,000 drivers, 200,000 users, and had completed 2.5 million rides in Queensland.¹⁶⁴ Uber indicated their interest in a regulatory response from the government which would legalise the service and allow it to expand across regional cities.¹⁶⁵ Uber claimed to be providing a useful service to the public. 'We have also seen across many markets that having access to safe, reliable and affordable transport lowers incidence of drink-driving,' a spokesperson said.

Opponents of Uber, most prominently taxi industry representatives, argued that the service devalued taxi licences, raised safety concerns and provided no value to Queenslanders.¹⁶⁶ 'We've already seen assaults with no camera evidence by Uber drivers across Australia, and without enforcement of regulations nothing will be able to stop any sexual predator or person with the wrong motives starting their own illegal taxi service,' Taxi Council of Queensland chief executive Benjamin Wash said.¹⁶⁷ The escalating tensions between the taxi industry and Uber culminated in the assault of Uber drivers, heckling of government ministers, and proposed legislation for Uber drivers to lose their licence.¹⁶⁸

In October 2015, the Palaszczuk Government announced an independent review into the taxi industry and ride sharing.¹⁶⁹ The review, led by businessperson Jim Varghese AM, considered safety issues, flexibility, customer opinions of ridesharing, competition, and operational matters.¹⁷⁰

161 https://s3-ap-southeast-2.amazonaws.com/ehq-production-australia/0d5dedd1ea80953c4af535fe5cb4bb6084f042b2/documents/attachments/000/062/962/original/Media-release_New_level_playing_field_for_personalised_transport.pdf?1505269705

162 <https://www.brisbanetimes.com.au/technology/brisbane-no-closer-to-uber-app-approval-20140621-zshh6.html>

163 <https://www.brisbanetimes.com.au/national/queensland/uber-rules-block-inspectors-from-booking-drivers-to-issue-fines-20151014-gk8viiw.html>

164 <https://www.smh.com.au/business/uber-chalks-up-25-million-rides-in-brisbane-in-just-18-months-20151021-gkf1lk.html> <https://www.brisbanetimes.com.au/national/queensland/uber-begins-summer-service-ridesharing-on-the-sunshine-coast-20151123-gl5jp3.html>

165 <https://www.smh.com.au/business/uber-chalks-up-25-million-rides-in-brisbane-in-just-18-months-20151021-gkf1lk.html>

166 http://www.tcq.org.au/uploads/3/0/6/0/30604245/1_-_submission_with_recommendations.pdf

167 <https://www.brisbanetimes.com.au/national/queensland/uber-takes-swipe-at-queensland-government-over-a-lack-of-dialogue-20151013-gk879g.html>

168 <https://www.brisbanetimes.com.au/national/queensland/katter-proposes-demerit-points-for-uber-drivers-20150914-gjltw.html> <https://www.brisbanetimes.com.au/national/queensland/brisbane-uber-driver-accused-by-alleged-attacker-of-stealing-business-20151009-gk54zw.html>

169 <https://www.brisbanetimes.com.au/national/queensland/uber-review-welcomed-but-answers-needed-sooner-20151007-gk3qrx.html>

170 <http://www.tmr.qld.gov.au/~media/busind/Taxiandlimousine/industryreviewfactsheet.pdf>

The Opportunities for Queensland Transport review included both a green paper (May 2016) and a white paper (August 2016) and received 1,242 submissions, undertook focus groups and surveys, and consulted with 80 stakeholders.¹⁷¹ The review did consider arrangements in other jurisdictions, including other states and overseas, in particular in relation to other regulatory burdens and the provision of adjustment assistance payments. The review found that while there was strong opposition from the taxi industry, there was substantial consumer demand for change to the industry and greater choice. Economic analysis indicated that the status quo was not sustainable.

The review recommended a 'Managed Transition Model,' overseen by a Personalised Transport Commissioner, which prioritises public choice, removes overly productive industry requirements for all industry participants. The model included the immediate introduction of a 'ride-sourcing licence' for ride sharing services in South East Queensland, which would not permit hails but allow Uber to legally operate, and a five year strategic plan to reform the transport services industry.

The Queensland Government responded to the White Paper by introducing Queensland's Personalised Transport Horizon – Five Year Strategic Plan for Personalised Transport Services 2016-2021 to outline how the changes would be implemented.¹⁷² This plan states the four aims of the government: strengthen safety, encourage competition, drive innovation and ensure accountability. As part of the process, the government removed various requirements for all drivers, including English language proficiency, geographic knowledge, minimum age limits, appearance of drivers, and cleanliness of vehicles.¹⁷³ The changes to the system have remained controversial, particularly among the taxi industry who have complained about the lack of adequate consultation prior to the changes. Furthermore, in August 2018, taxi licence holders announced their intention to sue the state government for reducing the value of licences.¹⁷⁴

171 <https://cabinet.qld.gov.au/documents/2016/Aug/PersTrans/Attachments/WhitePaper.PDF>

172 <https://personalisedtransport.tmr.qld.gov.au/20996/documents/40613>

173 <https://www.couriermail.com.au/news/queensland/queensland-government/no-more-english-tests-for-taxi-drivers/news-story/27e025dbec4d28a2c72c66fc8a4304e1>

174 <https://www.couriermail.com.au/news/queensland/taxis-building-war-chest-in-bid-to-sue-over-ride-sharing/news-story/8c71742700651a5b6c55f3d047ab6c13>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The entry of Uber into the market in Queensland substantially disrupted the existing personal transport options. Uber's popularity and provision of millions of rides and the inability of the Queensland Government to enforce the ban, made the status quo unsustainable. There was clear evidence, as exposed in the independent review, of a need to clarify the legal status of the service as well as implement an equal playing field regulation with the taxi industry.
2	Public interest parameters	Yes	The government appealed to a broad public interest to allow more competition in the transport sector and therefore increase consumer choice, this was outlined both in the white paper and the government's policy response. There was a specific decision to reject sectional industry interest, particularly of the previously highly regulated taxi industry, who sought to prevent competition in the market.
3	Consideration of alternatives	Yes	The Opportunities for Personalised Transport White Paper considered four alternatives, including the status quo, ride sharing legalisation, legalising ride sourcing, and whole of industry reform. Each alternative was assessed and consulted on with the public.
4	Implementation choices	Yes	The White Paper outlined different methods of implementing the changes to the industry, concluding in favour of a staged 5 year process.
5	Cost-benefit analysis	Yes	The cost-benefit analysis of various regulatory options was assessed by KPMG and Synergies Economic Consulting in the White Paper process – this is surmised in the White Paper, however, was not released due to 'commercial-in-confidence' considerations.
6	Policy design framework	Yes	The Five Year Strategic Plan outlines how the legalisation will be implemented, legislated in stages, monitored, and evaluated.
7	Further consultation	Yes	The Queensland Government claims to have consulted with stakeholders throughout policy development and implementation process, notably, however, the taxi industry has complained about a lack of adequate consultation.
8	Produce green then white paper	Yes	Green Paper: Opportunities for Personalised Transport, May 2016 White Paper: Opportunities for Personalised Transport, August 2016
9	Develop legislation	No	The initial legalisation of ride sharing was undertaken through regulatory change. Further changes were subsequently legislated in 2017. ³²
10	Communication	Yes	Despite initial delays with the review process, the Government undertook a straightforward information campaign about the changes following the decision to reform the industry.
		9/10	

Native vegetation law

In May 2018, the Queensland Government legislated that limits the clearing of native vegetation. The Vegetation Management and Other Legislation Amendment Bill 2018 requires farmers to obtain approval to clear 'high value regrowth vegetation', and prevents clearing on 860,000 hectares.¹⁷⁵ Natural Resources Minister Dr Anthony Lynham declared that the law was necessary to protect the environment: 'It is a question of science. Labor accepts the science that proves that unsustainable rates of tree clearing are damaging Queensland's environment and our climate and ultimately, damaging our economy.'¹⁷⁶ Native vegetation management has been a longstanding issue of contention. The latest legislation reversed amendments by the previous Liberal National Government in 2013 that allowed for the clearing of high-value agricultural land when economically viable and the environmental effects minimised. This effectively reversed the earlier legislation of limitations introduced in 1999 under the Vegetation Management Act.

The explanatory notes with the 2018 legislation stated that the government did not consult on the amendment bill, although, according to the explanatory note with the legislation, there were earlier consultations with farmers and environmental groups in 2015.¹⁷⁷ The only open review and consultation of the 2018 amendments was a parliamentary inquiry by the State Development, Natural Resources and Agricultural Industry Development Committee after the legislation itself had been designed.¹⁷⁸ The committee received 13,875 submissions, a Queensland parliament record.

The inquiry report noted the lack of consultation about the changes. The Queensland Law Society submitted that more consultation would have been welcomed 'given the sensitive nature of this legislation and the significant public debate on the issues' when similar amendments were proposed in 2016. The Queensland Farmers' Federation called for a full regulatory impact statement (RIS) before the policy proceeded, though the bill was exempted from the normal RIS process. The Committee, which was controlled by Labor government parliamentarians, recommended that the Bill be passed.

The law was supported by environmental groups, who said the legislation should go further. Wilderness Society Queensland Campaign Manager Gemma Plesman declared that 'These laws are a vital first step in stopping Queensland's globally significant deforestation crisis but there are some loopholes in the legislation that need to be closed if these laws are going to truly end Queensland's deforestation crisis.'¹⁷⁹ The Wilderness Society and other environmental groups pointed to the substantial increase in land clearing after the 2013 law. Between 2013 and 2016, there was 112,400 hectares of clearing, enabling high value agriculture on approximately 107,000 hectares of land 107,000.¹⁸⁰ There was a substantial increase in land clearing in 2016, however this has been partly attributed to anticipation of the new law leading to pre-emptive clearing.

The law was opposed by farmers, who raised concerns about their ability to farm their land, properly manage vegetation growth, and the loss of land value. The Queensland Farmers' Federation stated that the bill failed to 'provide a long term solution to the issue of balancing the needs of the environment and the legitimate business interests of Queensland intensive farmers

175 <http://www.abc.net.au/news/2018-05-04/land-clearing-laws-tightened-as-farmers-fear-for-future/9722416>

176 <http://www.abc.net.au/news/2018-05-04/land-clearing-laws-tightened-as-farmers-fear-for-future/9722416>

177 <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T300.pdf>

178 <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2018/5618T489.pdf>

179 <https://www.wilderness.org.au/news-events/queensland-parliament-passes-new-deforestation-laws>

180 Departmental Briefing to the Agriculture and Environment Committee, Legislative Assembly, Brisbane, 2 March 2016, 2 (Sue Ryan)

and the prosperity of the state as a whole.¹⁸¹ Beef and crop farmer Peter Thompson told the ABC that 'These laws restrict how that land can be managed in the most optimal way for land, wildlife and livestock.'¹⁸² Institute of Public Affairs researcher Morgan Begg raised concerns about the infringement on property rights, the substantial costs of red tape burden on farmers, and the prioritisation of 'environmentalism at the expense of economic and agricultural development.'¹⁸³ Opponents of the reforms, including some Aboriginal leaders, also argued that the policy reflected a prioritisation of the 'green' environmental interest, including support in preferences from the Greens in inner-city seats, over a wider public interest.¹⁸⁴

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	No	The lack of public review prior to the development and introduction of legislation makes it difficult to establish the evidential basis for native vegetation law that the government introduced. The legislation appears to derive from a pre-election commitment by the Queensland Government, rather than an evidence based process.
2	Public interest parameters	No	The objectives of the amendments, as defined in the explanatory memorandum, appears to have been focused on the environmental interest and not the wider public interest that also considers the benefits of farming and agriculture. This prioritisation may link to the electoral interest of the Labor Party in inner-city seats with a high support for the Greens environmental interest.
3	Consideration of alternatives	No	The Queensland Government does not appear to have undertaken a review to consider alternatives related to protecting the natural environment, and balance that against property right claims by farmers.
4	Implementation choices	No	The Queensland Government does not appear to have assessed the potential mechanisms for implementing the policy, from incentives to coercion.
5	Cost-benefit analysis	No	The Queensland Government does not appear to have undertaken a full cost-benefit analysis of the proposal, considering both the potential environmental benefit and costs to the farmers.
6	Policy design framework	No	The Queensland Government does not appear to have designed a framework for the policy, outlining stages of implementation or a review and audit.
7	Further consultation	No	The Queensland Government did not consult on the construction of the bill. Consultation was undertaken by a parliamentary committee after the policy had been designed, however this was not in the best practice order.
8	Produce green then white paper	No	The Queensland Government did not develop a green and white paper to investigate the native vegetation law changes.
9	Develop legislation	Yes	The Queensland Government developed and legislated the Vegetation Management and Other Legislation Amendment Bill 2018.33
10	Communication	Yes	The Queensland Government clearly stated the intention and details of the native vegetation changes.
		2/10	

181 <https://www.qff.org.au/wp-content/uploads/2017/04/20180322-QFF-submission-to-SDNRAIDC-re-Veg-Mgt-Bill-2018-WEB.pdf>

182 <http://www.abc.net.au/news/2018-05-04/land-clearing-laws-tightened-as-farmers-fear-for-future/9722416>

183 https://ipa.org.au/wp-content/uploads/2018/06/IPA_submission_Vegetation-Management-and-Other-Legislation-Amendment-Bill-2018.pdf

184 <https://www.theaustralian.com.au/news/nation/queenslands-treeclearing-law-faces-legal-threat-from-indigenous-group/news-story/945d6755a20200da5da1bd62c935d666> <https://www.theaustralian.com.au/national-affairs/state-politics/queensland-election/queensland-treeclearing-biggest-in-decades/news-story/960bcb5d20298595a65bcb0d145947ac>

North Queensland Stadium

The North Queensland Stadium is a 25,000 seat stadium under construction in Central Business District of Townsville, Queensland. The project is currently budgeted to cost \$250 million, including a \$140 million contribution by the state government and \$100 million by the federal government. The estimated completion date for the project is the 2020 National Rugby League season.

The North Queensland Stadium is advertised as 'multi-purpose,' however the primary use of the stadium will be the home ground for the North Queensland Cowboys rugby league team, who are major advocates for a new stadium. The North Queensland Cowboys are currently based at Willows Sports Complex, currently known as 1300SMILES Stadium, which is located 15 kilometres south of Townsville and has a capacity of 26,500.

The North Queensland Cowboys claimed that the cost of upgrading the existing 1300SMILES Stadium would amount to \$100 million, and advocated for a new complex closer to the Townsville centre.¹⁸⁵ Peter Jourdain, the former North Queensland Cowboys chief executive, said that 'Building a new combined stadium and convention centre in the CBD would be good for our club ... and the whole city'.¹⁸⁶

However, a cost-benefit analysis of the project raised serious questions about the viability. A confidential business case, developed by the Queensland Department of State Development for Infrastructure Australia, reportedly found that the proposed stadium 'is not financially viable and will cost taxpayers half a billion dollars in its first 30 years of operation'.¹⁸⁷

The stadium would only have an estimated 13 event days a year for home games for the North Queensland Cowboys. The cost-benefit analysis gave the stadium a rating of 0.214. That is, for every dollar of taxpayer funds spent on the project the expected return was just 21.4 cents. The business case did note the potential for incalculable social and community benefits, including increasing social cohesion. A separate 2013 feasibility study prepared for the Townsville City Council by consultancy firm KPMG found that the stadium would create 31 permanent jobs after construction, and deliver an annual loss of \$2.4 million.¹⁸⁸

Despite the negative assessment of the cost-benefit analysis it received substantial political support, particularly in the period immediately preceding state and federal elections. Then-Queensland Opposition Leader Anastacia Palaszczuk promised \$100 million for the stadium in December 2015, which was matched by a \$150 million promise by then-Premier Campbell Newman.¹⁸⁹ Labor, led by Palaszczuk, subsequently won the January 2015 Queensland election, and dedicated a further \$40 million for the project. Palaszczuk claimed that the stadium 'will provide jobs over a number of years and restore confidence in the region'.¹⁹⁰ In April 2015, the Townsville Council purchased the necessary land for the project.¹⁹¹

The federal government initially rejected funding the proposed project. In May 2015, Treasurer Joe Hockey declared that the federal government 'isn't in the business of paying for stadiums'

185 The source of this assertion is unclear, see <https://www.townsvillebulletin.com.au/news/how-townsville-got-its-stadium-after-a-sixyear-campaign/news-story/d076a6f39582aac74e6945d08bedd6a4>

186 <https://www.townsvillebulletin.com.au/news/how-townsville-got-its-stadium-after-a-sixyear-campaign/news-story/d076a6f39582aac74e6945d08bedd6a4>

187 <http://afr.com.au/news/politics/election-2016--townsville-stadium-doesnt-stack-up-20160511-gosd8y>

188 <http://sistercitypartners.com.au/wp-content/uploads/Townsville-Stadium-Study-Final-copy.pdf>

189 <http://www.townsvillebulletin.com.au/labors-100-million-stadium-pledge/story-fnjfzpyk-1227152093746>

190 <http://www.townsvillebulletin.com.au/labors-100-million-stadium-pledge/story-fnjfzpyk-1227152093746>

191 <http://www.townsvillebulletin.com.au/news/townsville/council-to-buy-super-stadium-site-in-townsville-cbd/story-fnjfzsax-1227324683084>

and said that it should be the responsibility of the state government.¹⁹² Nevertheless, the public campaign for the stadium continued. In October 2015 the Cowboys co-captain Johnathan Thurston used the team's inaugural grand final victory to call for the new stadium on national television while former Prime Minister Malcolm Turnbull was on the same stage.¹⁹³ This media and public relations campaign which put substantial pressure on policymakers to fund the project.

In June 2016, during the federal election campaign, Turnbull committed \$100 million to the stadium.¹⁹⁴ The stadium sits within an electorally important marginal seat, Herbert, which led to accusations of 'pork barrelling' at the time of the announcement.¹⁹⁵ When asked whether he had seen the cost-benefit analysis, Turnbull did not answer directly and instead responded that 'Overall, the benefits of co-ordinated development are very considerable'.¹⁹⁶ Local MP Ewan Jones, when asked about the cost-benefit analysis, said that 'I don't think it's that big an issue'.¹⁹⁷

Advocates for the stadium have rejected the need for a cost-benefit analysis and argued that the transformative potential of the stadium, and the convenience of a CBD located stadium, outweigh the potential cost of the project.¹⁹⁸ Some, however, have questioned the economic benefits of the stadium. Sister City Partners director Warwick Powell, an advocate for development in Townsville, told the Australian Financial Review that 'It is a boondoggle, pure and simple. The fact is, a football stadium isn't an economic strategy. The KPMG feasibility study shows it to be a dud. With negative net present value, the project takes away economic value rather than adds to it.'

In recent months' evidence has emerged that the project could go over budget. In 2018 it was reported that the project could cost \$300 million, 30 per cent more than budgeted, due to strict workplace conditions imposed by the CFMEU.¹⁹⁹ A further complicating element in relation to cost is the decision to prioritise local supply and employment, including the aim of 80 per cent building, subcontracting, and supply by locals.²⁰⁰

192 <https://www.townsvillebulletin.com.au/news/joe-hockey-rules-out-funding-for-townsvilles-cbd-stadium/story-fnjfzs4b-1227364339778>

193 <http://www.abc.net.au/news/2015-10-06/cowboys-stadium-agenda-thurston-comments/6831108>

194 <https://www.smh.com.au/politics/federal/100m-for-a-local-stadium-thats-not-pork-barrelling-thats-a-bold-vision-says-pm-20160613-gphs1k.html>

195 <https://www.theaustralian.com.au/national-affairs/federal-election-2016-high-rollers-head-north-for-big-stakes/news-story/75b8814f1ce06bc5ff3530c567248792> <https://www.smh.com.au/politics/federal/100m-for-a-local-stadium-thats-not-pork-barrelling-thats-a-bold-vision-says-pm-20160613-gphs1k.html>

196 <https://www.smh.com.au/politics/federal/100m-for-a-local-stadium-thats-not-pork-barrelling-thats-a-bold-vision-says-pm-20160613-gphs1k.html>

197 *ibid.*

198 <https://www.couriermail.com.au/news/opinion/townsville-stadium-if-we-based-every-new-project-on-commercial-viability-nothing-would-ever-get-built/news-story/027764af95e7d8ea3a4ece7e02c805db> <https://www.smh.com.au/politics/federal/townsville-stadium-could-be-the-opera-house-of-the-north-turnbull-minister-20160818-gqvflf.html>

199 <https://www.couriermail.com.au/news/queensland/queensland-government/the-cost-of-the-townsville-stadium-could-blow-out-if-demands-by-the-cfmeu-are-imposed/news-story/705d8d1b2f5fee15b8b9cde3751debf8>

200 <https://www.statedevelopment.qld.gov.au/major-projects/north-queensland-stadium-supply-employment.html>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	No	The Queensland Government has not established an evidential necessity of a new stadium, particularly considering that the club had a pre-existing stadium, the high cost of the new stadium, and the limited projected usage.
2	Public interest parameters	No	The Queensland Government has not stated a wider public interest in the stadium, beyond the creation of relatively few jobs and the narrow benefit to North Queensland Cowboys rugby league team. The public interest is undermined when the opportunity cost is considered. Stadium funding arguably comes at the expense of funding for high value infrastructure projects such as transport links, schools, and hospitals in Northern Queensland. It is also unclear that the public interest is served by funding for stadiums whose primary benefactors are sports clubs.
3	Consideration of alternatives	Yes	There was some initial consideration of alternatives to building a new stadium within the KPMG report for the Townsville Local Council. These options included upgrading the existing stadium, various locations for a new stadium, and a combined concert stadium and sports stadium (the preferred option of the KPMG report, which was ultimately rejected in favour of a standalone stadium).
4	Implementation choices	Yes	The Queensland Government, through the report produced by the Townsville Council, did assess different options for implementing the changes in the KPMG report.
5	Cost-benefit analysis	No	The Queensland Government did not publically release the cost-benefit analysis and hence it is difficult to fully assess. Nevertheless, according to reports, for every taxpayer dollar spent on the project the expected return was 21.4 cents.
6	Policy design framework	No	The Queensland Government does not appear to have designed a framework for the policy, outlining stages of implementation or a review and audit. This lack of planning is perhaps confirmed by the potential for substantial cost blowouts.
7	Further consultation	No	The Queensland Government does not appear to have undertaken further consultation subsequent to the funding decision during the election campaign.
8	Produce green then white paper	No	The Queensland Government has not produced a green or white paper.
9	Develop legislation	No	The Queensland Government did not develop legislation for this project.
10	Communication	Yes	The Queensland Government clearly communicated the new policy of a stadium in North Queensland.
		3/10	

Tackling Alcohol-Fuelled Violence

In February 2016, the Queensland Parliament legislated the Alcohol-Fuelled Violence Amendment Bill, following a marathon debate that extended to 3.00am in the morning.²⁰¹ The policy aims to reduce harm from alcohol-fuelled violence by reducing trading hours. From 1 July, 2016 venues were required to cease serving alcohol at 2.00am, and 'Safe Night Precincts,' which includes high-traffic areas such as Fortitude Valley, Surfers Paradise, Cairns and Bundaberg, were required to call last drinks at 3.00am. There was also a ban on high alcohol-content drinks (also known as 'shots') after midnight, and requirements to publish information on liquor licencing. The most controversial element of the policy, however, was the 'lockout' laws, that would prevent new entrants to a venue after a certain time prior to the end of trading hours. From February 1, 2017, patrons would be prevented from entering a venue after a 1.00am 'lockout'.

The legislation was supported by the Labor government, two Katter's Australia Party parliamentarians following a last-minute deal, and an independent, however opposed by the Liberal National opposition.²⁰² Premier Anastacia Palaszczuk declared that 'Doing nothing is not an option. I've spoken to countless doctors, nurses, paramedics, police, parents and grandparents who have urged me to take action to curb alcohol fuelled violence.'²⁰³ The explanatory memorandum pointed to 'clear evidence that alcohol-related harm is an issue for Queensland between midnight and 5am', and stated the objectives were to tackle alcohol-fuelled violence, provide clarity and improve the operational efficiency of the regulation, and ensure consistency across Queensland statutes.²⁰⁴

The Tackling Alcohol-Fuelled Violence policy followed years of debate in Queensland and across Australia about the appropriate method to tackle late night violence. In 2014, former Premier Campbell Newman rejected lockout, and asked for public comment on other potential solutions. The Newman Government introduced a 'Safe Night Out Strategy' which increased police power, introduced tougher penalties, included education, and created 15 Safe Night Precincts with local boards to safely manage the issue and mandatory ID scanners.²⁰⁵ The process found that just 4 per cent of the 5500 submissions he had received supported earlier closing times.²⁰⁶ Nevertheless, the Labor opposition responded at the time by committing to lockout laws.²⁰⁷ A 2015 parliamentary inquiry into the laws did not recommend passage.²⁰⁸

Opponents of the laws raised concerns about the effectiveness of lockout laws, the 'nanny state' limitation on individual liberty, threats to nightlife employment opportunities, and increasing violence in other areas. LNP state member Trevor Watts raised concern that there could be an increase in violence at house parties. 'We know that if someone gets assaulted in a safe night precinct that there are police, there are cameras, there is ambulance, there is support,' Watts said.²⁰⁹ Opponents of the reform pointed to the failure of previous lockout laws to reduce alcohol

201 <https://www.couriermail.com.au/news/queensland/controversial-tackling-alcoholfuelled-violence-amendment-bill-passed-in-queensland-parliament/news-story/e3278ecddf301d76706324650c5f4d66>

202 <https://www.couriermail.com.au/news/queensland/queensland-government/queensland-lockout-laws-secure-support-from-crossbench-mps/news-story/f81b4b734eb3661c370f6211d94d7346>

203 <https://www.thepremier.qld.gov.au/newsroom/alcohol-fuelled-violence.aspx>

204 <https://cabinet.qld.gov.au/documents/2015/Nov/TAFVBill/Attachments/ExNotes.pdf>

205 <https://cabinet.qld.gov.au/documents/2014/Jun/SafeNightOutBill/Attachments/Strategy.pdf> <http://statements.qld.gov.au/Statement/2014/3/23/safe-night-out-strategy-to-stop-the-violence>

206 <https://www.brisbanetimes.com.au/national/queensland/queensland-opposition-backs-the-newcastle-solution-20140124-31ea6.html#ixzz2uCxqYNuO>

207 <https://www.brisbanetimes.com.au/national/queensland/queensland-opposition-backs-the-newcastle-solution-20140124-31ea6.html#ixzz2uCxqYNuO>

208 <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T44.pdf>

209 <https://www.couriermail.com.au/news/queensland/queensland-government/queensland-lockout-laws-lnp-member-fears-suburban-unrest/news-story/8dc2c3c33bd006d1c233bcad44f3700e4>

fuelled violence.²¹⁰ Reviews of previous lockout laws in Surfers Paradise (QLD), Ballarat (VIC), and Newcastle (NSW) concluded that the introduction of lockout laws did not reduce alcohol related assaults or rates of alcohol related injuries at emergency departments.²¹¹

In January 2017 an initial six month review of the policy, Impact of the last drinks and lockouts, found that there had been no reduction in alcohol-related assaults or emergency department injuries, and concluded that 'current research evidence suggests that the introduction of lockouts (one-way doors) is not likely to significantly change current trends (except for pre-drinking)'.²¹² Following the independent review findings the Queensland Government announced that the 1.00am lockouts provision of the law would not proceed.²¹³

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	No	The Queensland Government appealed to the evidence of increasing alcohol fuelled violence, however there was a lack of evidence of the effectiveness of lockout laws – as shown by previous experience of lockout laws, the subsequent 6-month policy review, and decision to not continue with the centrepiece lockout – or stakeholder consultation.
2	Public interest parameters	Yes	The Queensland Government appealed to a broad public interest in protecting the community from physical threat. Notably, however, this appeal was not balanced against the costs of limiting the ability for businesses to operate and interests of responsible consumers who would be impacted by the law changes targeted at a small number of misbehaving individuals.
3	Consideration of alternatives	No	The Queensland Government did not undertake a review to consider potential alternatives to the lockout laws policy. The only reviews were by the previous Government, which did not conclude in favour of lockout laws, and a parliamentary review that did not formally consider the alternatives. ³⁴
4	Implementation choices	Yes	The Queensland Government considered various methods to reduce alcohol fuelled violence, including lockout laws, restrictions on drinks and ID scanners.
5	Cost-benefit analysis	No	The Queensland Government does not appear to have undertaken a cost-benefit analysis of the policy, considering potential losses to the entertainment industry in comparison to the potential increase in human safety.
6	Policy design framework	No	The Queensland Government does not appear to have developed a full policy design framework, including clear goals for reduction in violence, and performance measures. Notably, however, there was a full review process for the policy.
7	Further consultation	No	There is a lack of evidence of public consultation, including with the impacted industry, about the proposed changes.
8	Produce green then white paper	No	The Queensland Government did not produce a green and white paper of the policy before introducing legislation.
9	Develop legislation	Yes	In May 2016, the Queensland Government passed the Tackling Alcohol-Fuelled Violence Amendment Bill which legislated the changes, following extensive Parliamentary debate. ³⁵
10	Communication	Yes	The Queensland Government clearly communicated the policy and the intention of the policy upon announcement.
		4/10	

210 <https://www.smh.com.au/opinion/lockout-laws-represent-awful-public-policy-20160630-gpv6dl.html>

211 de Andrade, D, Homel, R, & Townsley, M. (2016). Trouble in paradise: The crime and health outcomes of the Surfers Paradise licensed venue lockout. *Drug and Alcohol Review*, 35(5), 564-572; Miller, P, Coomber, K, Sonderlund, A, & McKenzie, S. (2012). The long-term effect of lockouts on alcohol-related emergency department attendances within Ballarat, Australia. *Drug and Alcohol Review*, 31(4), 370-376; Kypri, K, McElduff, P, & Miller, P. (2014). Restrictions in pub closing times and lockouts in Newcastle, Australia five years on. *Drug and Alcohol Review*, 33(3), 323-326.

212 <https://www.thepremier.qld.gov.au/newsroom/assets/alcohol-fuelled-violence-six-mth-report.pdf>

213 <https://www.thepremier.qld.gov.au/Tackling%20Alcohol-fuelled%20Violence%20Policy>

Victoria

Climate Change Act 2017

In February 2017, the Victorian Parliament legislated the Climate Change Act.²¹⁴ The centrepiece of the new legislation is a commitment of net zero emissions by 2050, formally legislating the goal of the international Paris Agreement.²¹⁵ The legislation also introduced a new set of policy objectives and requires five yearly interim targets based on expert advice, the government to develop a five yearly Climate Change Strategy (from 2020), the development of Adaptation Action Plans, pledges from within the government to reduce emissions, and periodic reporting. These pledges are not accompanied by specific new policies, and businesses would be encouraged, not forced, to meet the targets.²¹⁶ Since the law was legislated, the Victorian Government has called for expert advice on the interim targets for 2021-25 and 2026-30.²¹⁷

Premier Daniel Andrews declared that the targets would mean that 'Victoria is once again leading the nation when it comes to tackling climate change' and lauded the potential for 'new jobs and economic opportunities created by renewable energy.'²¹⁸ Victorian Minister for Energy, Environment and Climate Change Lily D'Ambrosio declared that 'We're proud of what we've achieved with our Australian-first climate legislation – and we want to make sure we continue to lead the way in reducing our carbon footprint.'²¹⁹ The Preamble to the legislation justifies act on the basis of the international goal of keeping temperature increases to below 2 degrees Celsius above pre-industrial levels, and the need to prepare for the impact of climate change on Victoria. 'Victoria must also take strong action to build resilience to, and reduce the risks posed by, climate change and protect those most vulnerable,' the Preamble states.

The new legislation was in response to the Independent Review of the Climate Change Act 2010, which was tasked to consider the effectiveness of the Act in achieving its objectives and to identify options and make recommendations to strengthen the Act.²²⁰ The Review received 100 individual submissions, as well as 1550 campaign submissions. The Review made 33 recommendations for strengthening the act. In response, the Victorian Government ruled out a state-based emissions trading scheme or carbon tax, however did commit to the targets.

The Climate Change legislation was welcomed in principle by environmental groups. Friends of the Earth Australia campaigns director Cam Walker said that 'Today is not an endpoint but it is a significant point along the way. It's the first time the premier has fronted the issue of climate change and really owned it.'²²¹ Environment Victoria chief executive Mark Wakeham stated that 'Setting a clear target for reaching zero climate pollution provides a strong signal for all future government

214 [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/05736C89E5B8C7C0CA2580D50006FF95/\\$FILE/17-005aa%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/05736C89E5B8C7C0CA2580D50006FF95/$FILE/17-005aa%20authorised.pdf)

215 http://unfccc.int/paris_agreement/items/9485.php

216 This is discussed here <https://www.theage.com.au/national/victoria/victoria-to-stop-pumping-out-carbon-dioxide-by-2050-premier-daniel-andrews-promises-20160609-gpey3r.html>

217 <https://www.climatechange.vic.gov.au/reducing-emissions/interim-targets>

218 <https://www.premier.vic.gov.au/victoria-to-lead-the-nation-on-climate-change/>

219 <https://www.premier.vic.gov.au/victoria-leading-charge-against-climate-change/>

220 https://www.climatechange.vic.gov.au/__data/assets/pdf_file/0019/55306/Independent-Review-of-the-Climate-Change-Act-2010.pdf

221 <https://www.theguardian.com/australia-news/2016/jun/09/climate-change-victoria-pledges-zero-net-carbon-emissions-by-2050>

and business decisions. We need to reach this target as quickly as possible.’ The Victorian Greens said that the legislation does not go far enough.²²² Greens’ environment spokeswoman Ellen Sandell declared that ‘If Labor is serious about climate change, they shouldn’t just announce they will maybe do something by 2050. They must urgently phase out coal and set a strong renewable energy target now.’²²³

In response to the targets, some questioned appropriateness of action at the state level. Australian Industry Group Victorian Director Tim Piper stated that national emissions targets are ‘strongly preferable’ and that ‘A durable and effective national approach remains essential’.²²⁴ Daniel Wild of the Institute of Public Affairs opposes the existence of goals that aim for a reduction of emissions, claiming that the economic costs of reduction are ‘significant and irreparable,’ have led to high energy prices, and are hurting economic growth, wages, and productivity growth.²²⁵

Opponents of government action on climate change altogether both question the scientific accuracy of climate science and the impact of policy changes on emissions. Herald Sun columnist Andrew Bolt has argued against climate ‘alarmism,’ and writes that ‘We have had not more cyclones but fewer; not less rain in Australia but more; not fewer polar bears but more; and not worse crops but record ones, here and overseas.’²²⁶ Others question the effectiveness of government action. Bjørn Lomborg of the Copenhagen Consensus Center, in a peer-reviewed paper, concludes that the Paris climate promises would reduce temperatures by just 0.05°C by 2100.²²⁷

222 <https://www.theguardian.com/australia-news/2016/jun/09/climate-change-victoria-pledges-zero-net-carbon-emissions-by-2050>

223 <https://www.theguardian.com/australia-news/2016/jun/09/climate-change-victoria-pledges-zero-net-carbon-emissions-by-2050>

224 <https://www.heraldsun.com.au/news/victoria/victorian-governments-carbon-neutral-pledge-spells-trouble-for-coal-mines/news-story/3fab251849b128f544a5facbdf7aaafd>

225 https://www.ipa.org.au/wp-content/uploads/2017/06/IPA_Report_Review_Of_Climate_Change_Policies29062017.pdf

226 <https://www.heraldsun.com.au/news/opinion/andrew-bolt/andrew-bolt-were-paying-for-scientists-climate-of-fear/news-story/8809eec515b883bf30aae83700e69073>

227 <https://www.lomborg.com/press-release-research-reveals-negligible-impact-of-paris-climate-promises>

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The Victorian Government cited the Independent Review of the Climate Change Act 2010 as the evidential basis for the Victorian Government's legislation.
2	Public interest parameters	Yes	The Victorian Government appealed to minimising the impact of climate change, however, notably, does not appear to have balanced this public interest with the potential cost of reducing emissions compared to the impact of reducing emissions. The public interest could be undermined by this lack of balancing competing pressures.
3	Consideration of alternatives	Yes	The Victorian Government considered various policy alternatives in the Independent Review.
4	Implementation choices	No	The Victorian Government does not appear to have assessed various implementation options for responding to climate change.
5	Cost-benefit analysis	No	The Victorian Government has not undertaken a cost-benefit analysis on the Climate Change Act 2017, considering the cost to consumers and businesses of reducing emissions compared to the benefit to the climate. During a press conference the Premier was asked whether the Victorian Treasury had undertaken modelling, to which he claimed the costs of inaction are higher – this broad assertion rather than confirming the existence of modelling indicates that such modelling does not exist. ³⁶
6	Policy design framework	No	While the legislation does include goals and ongoing assessment, it is notable that the Victorian Government did not state how the emissions reduction goals would actually be achieved, particularly the aim for zero net emissions by 2050. In itself, nothing in the legislation guarantees that anything will be achieved.
7	Further consultation	No	The Victorian Government does not appear to have undertaken further formal consultation between the announcement of the policy (June 2016) and passing of legislation (February 2017).
8	Produce green then white paper	No	The Victorian Government has not developed a green and then a white paper to assess the appropriate response to climate change.
9	Develop legislation	Yes	The Victorian Government introduced the Climate Change Bill, which was legislated.
10	Communication	Yes	The Government clearly communicated the intention of the policy, to create a long term target and mechanism for future plans to reduce Victoria's emissions. ³⁷
		5/10	

Indigenous treaty

In June 2018, the Victorian Parliament legislated the Advancing the Treaty Process with Aboriginal Victorians Act 2018, which makes Victoria the first state to enter formal treaty negotiations with its Aboriginal people. The stated purpose of this process is to 'help close the gap and improve the lives of all Aboriginal Victorians', and 'recognise and celebrate the unique status, rights, cultures and histories of Aboriginal Victorians'.²²⁸ The Bill does not specify who the Treaty is with or what it is about – rather, it requires the Victorian Government to work with an independent Aboriginal Representative Body to establish a treaty negotiation framework.

The Preamble to the Act states that the initiative is a response to demands by Aboriginal Victorians for a treaty and that is the 'next step towards reconciliation and to advance Aboriginal self-determination.' 'A future treaty or treaties can help heal the wounds of the past, provide recognition for historic wrongs, address ongoing injustices, support reconciliation and promote the fundamental human rights of Aboriginal peoples, including the right to self-determination,' the Preamble continues, 'The State is pursuing treaty because it is the right thing to do.'

The Victorian treaty process began in February 2016 at the Victorian Government's Self-Determination Forum attended by 500 Aboriginal and Torres Strait Islanders in Melbourne.²²⁹ After the Forum, the Victorian Government established the Aboriginal Treaty Working Group, which undertook two years of consultations with Traditional Owners, Aboriginal community organisations and young Aboriginal people on how to proceed with a treaty.²³⁰

This was a multistage process, which included engaging with up to 7,500 people, according to consultations undertaken by consultancy EY.²³¹ In the first stage (April – May 2016), there was a discussion with the Indigenous community on how a representative body should be designed, in the second stage (March 2017) the shape of the voting and candidacy for the representative body was established, and in the final phase the design was finalised. In March 2018, the Working Group released the final report on the design of an Aboriginal Representative Body.²³² The Aboriginal Representative Body is supposed to democratically represent all Aboriginal people in Victoria and its role is to determine a treaty negotiation framework (but not negotiate the treaty itself). It is currently scheduled to be created in 2018 or 2019.

The Victorian Government claimed substantial benefits from the Treaty process. Minister for Aboriginal Affairs Natalie Hutchins claimed that the 'Treaty will have benefits for all Victorians – promoting reconciliation, fostering shared pride in Aboriginal culture and helping to heal the wounds of the past.'²³³ Supporters of the treaty process have argued that it is necessary to address historical wrong, recognise Indigenous Australians as a distinct group, and deliver self-determination.²³⁴ It has also been noted that Australia is the only Commonwealth country that does not have a treaty with its Indigenous peoples.²³⁵

228 <https://www.premier.vic.gov.au/historic-treaty-legislation-passes-in-victoria/>

229 <https://www.theage.com.au/national/victoria/victoria-begins-talks-about-australias-first-ever-treaty-with-indigenous-people-20160226-gn52f1.html>

230 For discussion of the consultations, see <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13861-advancing-the-treaty-process-with-aboriginal-victorians-bill-2018>

231 https://www.vic.gov.au/system/user_files/Documents/av/EY%20Aboriginal%20Community%20Consultations%20on%20the%20Design%20of%20a%20Representative%20Body%20%E2%80%93%20Full%20Report.pdf

232 <https://www.vic.gov.au/aboriginalvictoria/treaty/recommendations-made-on-design-of-aboriginal-representative-body.html>

233 <https://www.premier.vic.gov.au/historic-treaty-legislation-passes-in-victoria/>

234 https://www.vic.gov.au/system/user_files/Documents/av/EY_Summary_Report_Phase_2__ATIWG_20170627.pdf

235 <http://www.abc.net.au/news/2016-12-14/creation-of-indigenous-treaties-being-led-by-states/8119488>

Opponents of a treaty argue that it would be disruptive and divisive. John Roskam and Simon Breheny of the Institute of Public Affairs reject a treaty that ‘would divide Australia into separate nations’. ‘Aboriginal and Torres Strait Islander peoples are Australian. The idea that they are separate from Australia is dangerous, and a treaty between Indigenous and non-Indigenous would divide Australians according to race,’ Roskam and Breheny wrote.²³⁶

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	No	The Victorian Government does not appear to have analysed whether the treaty process is necessary or will achieve the stated goals, such as reducing the gap in Indigenous outcomes, or sought to gather evidence other than for the purposes of consultation on the treaty process itself.
2	Public interest parameters	Yes	The Victorian Government has stated a public interest in reconciliation, as well as addressing the achievement and outcome gap. Notably, however, the Government has not considered whether a wider public interest is served by the treaty process, and the potential decisiveness of the treaty. The treaty process is further undermined by the appearance that it is largely symbolic rather than focused on practical outcomes.
3	Consideration of alternatives	No	The Victorian Government does not appear to have formally considered policy alternatives to pursuing a treaty that could improve outcomes for Indigenous Australians.
4	Implementation choices	Yes	The Aboriginal Treaty Working Group process, which included a report on the consultations on the design of a representative body by consultancy EY, did consider various potential models for implementing a treaty process in Victoria.
5	Cost-benefit analysis	No	The Victorian Government has not undertaken a cost-benefit analysis of either the treaty itself or the treaty process.
6	Policy design framework	No	The full design of the treaty, or even how this process will work in the future, is yet to be fully determined. The process itself, the nature of the treaty, and even who will negotiate the treaty, are all yet to be determined.
7	Further consultation	Yes	Since February 2016, the Victorian Government through the Aboriginal Treaty Working Group has undertaken extensive consultation. Notably, however, the government does not appear to have undertaken wider consultation with non-Indigenous Victorians about the treaty process.
8	Produce green then white paper	No	The Victorian Government did not develop a green and a white paper on Indigenous treaty representation.
9	Develop legislation	Yes	The Victorian Government legislated the Advancing the Treaty Process with Aboriginal Victorians Bill 2018, though has not legislated the treaty negotiation process or the treaty itself.
10	Communication	Yes	The Victorian Government has clearly stated the intentions of the policy – reconciliation and improving outcomes – in a concise and clear manner. ³⁸
		5/10	

236 <https://www.smh.com.au/opinion/indigenous-treaty-would-divide-australia-into-two-nations-according-to-race-20170530-gwgcjm.html>

Legalisation of medical cannabis

In April 2016, Victoria became the first Australian state to legalise the use of cannabis for medical purposes under the Access to Medicinal Cannabis Bill 2015. This followed a pre-election commitment by then-Opposition Leader Daniel Andrews in August 2014 to pursue legalisation. The Victorian Government justified the scheme on compassionate grounds, arguing that parents and patients have been turning to the black market out of desperation to access medical cannabis to alleviate pain and suffering. 'It is absolutely heart-breaking to see families having to choose between breaking the law and watching their children suffer – and now, thanks to our ground-breaking legislation, they won't have to,' Health Minister Jill Hennessy declared.²³⁷

The bill created a legal framework to enable the manufacture, supply and access to safe and high quality medicinal cannabis products in Victoria. At first the only group able to access medicinal cannabis is children with severe epilepsy, with the scheme potentially expanded in future based on the advice of the Independent Medical Advisory Committee. The Victorian Government also established the Office of Medicinal Cannabis to oversee the policy implementation, including manufacturing and working with clinicians, doctors and general practitioners to understand proscriptioin.

The scheme allows a doctor to prescribe cannabis for a medical condition or the side effects of treatment.²³⁸ It is the doctor's responsibility to weigh the evidence and individual circumstances to decide whether cannabis and what formulation and delivery mechanism is appropriate. Cannabis is not subsidised by the Commonwealth's Pharmaceutical Benefits Scheme like most medications, however the Victorian Government's compassionate access scheme funds access for children with severe intractable epilepsy.

The introduction of the policy followed a Victorian Law Reform Commission review of options for access to medicinal cannabis in exceptional circumstances.²³⁹ The review considered interaction with Commonwealth and international law, operation of a medical cannabis scheme, and how the scheme would work in practice. They also considered the policy settings in other jurisdictions regarding medical cannabis. The Commission published an issues paper, and a subsequent final report, and consulted with public, health and legal professionals and government officials, as well as regulators in other countries. The Commission found that Victorians were already using medical cannabis for a variety of conditions and symptoms despite its legal prohibition, and heard stories of 'dramatic improvements to their health that some cannabis users have experienced.'

Submissions expressed divergent perspectives. The Australian Medical Association (Vic), MS Australia and MS Research recommended further trials before legalisation of medical cannabis; while existing cannabis users as well as the Australian Nursing and Midwifery Federation supported legalisation. Some doctors have noted weak evidence of the effectiveness of medical cannabis. 'The evidence, in general, is modest,' Professor Mike Farrell said, about the effectiveness of medical cannabis.²⁴⁰ Nevertheless, advocates for legalisation and access pointed to the potential for pain alleviation, particularly in cases of epilepsy.²⁴¹ In May 2017, the first people to be granted access to medical cannabis were 29 critically ill children suffering from epilepsy.²⁴²

237 <https://www.premier.vic.gov.au/medicinal-cannabis-legalised-in-victoria/>

238 <https://www2.health.vic.gov.au/about/publications/factsheets/medicinal-cannabis-access-consumers>

239 <http://www.lawreform.vic.gov.au/content/medicinal-cannabis-report.html>

240 <https://www.smh.com.au/national/medicinal-cannabis-is-legal-it-s-not-clear-it-works-20180406-p4z86f.html>

241 <https://www.theage.com.au/national/victoria/victorian-children-with-epilepsy-to-take-part-in-medical-marijuana-trial-20160203-gmkate.html>

242 https://www.huffingtonpost.com.au/2017/02/28/victoria-grants-medical-cannabis-access-to-29-sick-children_a_21864235/

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	While the evidential basis on the usefulness of medical cannabis is mixed, there was evidence of patients accessing it illegally and some effectiveness in limited circumstances. Therefore, there was an evidential basis for the limited access to medical cannabis enabled by Victoria's reforms, particularly for children suffering from epilepsy.
2	Public interest parameters	Yes	The Victorian Government cited the public interest in helping sick and terminally ill patients reduce pain.
3	Consideration of alternatives	No	The Victorian Government does not appear to have formally considered alternatives to cannabis legalisation for pain alleviation and medical treatment.
4	Implementation choices	Yes	The Victorian Law Reform Commission's review considered a wide array of implementation choices.
5	Cost-benefit analysis	No	While the Department of Health did ask Deloitte Access Economics to analyse the cost of medical cannabis, there does not appear to have been an explicit cost-benefit analysis that considered the costs and benefits from legalising medical cannabis itself.
6	Policy design framework	Yes	The Victorian Government clearly established a framework for how the policy would be implemented, beginning with limited access and expanding over time through analysis by the Office of Medicinal Cannabis and the Independent Medical Advisory Committee.
7	Further consultation	Yes	Both before and after the passing of the legislation, the government undertook further consultation with stakeholders on how to effectively implement the policy, including establishing an Independent Medical Advisory Committee.
8	Produce green then white paper	No	The Victorian Government did not produce a green or white paper. The Victorian Law Reform Commission report did not consider alternatives – it was a paper looking at how to implement the change – and therefore it cannot be considered equivalent to a green and white paper process.
9	Develop legislation	Yes	Access to Medicinal Cannabis Bill 2015.39
10	Communication	Yes	The Victorian Government has clearly communicated the limited medical cannabis policy and changes over time.
		7/10	

Voluntary assisted dying

In November 2017, the Victorian Parliament passed the Voluntary Assisted Dying Act 2017.²⁴³ This law makes Victoria the first state to legalise ending one's own life. An individual, aged over 18 and of decision making capacity, is eligible to end their life when suffering from an incurable illness that is causing intolerable suffering and they are expected to live for less than six months. The safeguards include the requirements for two written requests from the patient, two doctors to sign off on the process, and a ban on doctors suggesting voluntary assisted dying. If they are capable the patient is expected to self-administer. Doctors can be conscientious objectors and refuse to provide information on the process. It has been estimated around 150 people in a year would use the scheme. The law will come into effect from 19 June 2019.

The legalisation of euthanasia in Victoria follows a process that began with the legislature. In May 2015, the Victorian Legislative Council launched an inquiry into end of life choices. The Inquiry into End of Life Choices received over 1,000 submissions and held a number of hearings. The final report, released in June 2016, made 49 recommendations related to palliative care and advance care planning and concluded by recommending that Victoria should legalise assisted dying.²⁴⁴ The Inquiry found that the 'Prohibition of assisted dying is causing some people great pain and suffering. It is also leading some to end their lives prematurely and in distressing ways.' The Inquiry noted that courts have been lenient on people who assist their loved ones die, and claimed that the failure to consistently apply justice could 'bring the law into disrepute' and that the law 'does not align with the community's views of reprehensibility'.

The Victorian Government responded by establishing a Ministerial Advisory Panel to determine how voluntary assisted dying would work in practice. The Panel included doctors, academics, lawyers, and healthcare sector managers, and received 176 submissions and held forums and roundtables with more than 300 stakeholders. The Advisory Panel released both an interim report (April 2017) and a final report (July 2017). The final report recommended a framework that attempted to balance access with oversight to guarantee community safety. The government designed legislation in accordance with the 68 safeguards recommended by the Advisory Panel.

In support of the legislation, Victorian Premier Daniel Andrews declared that 'This is about compassion and dignity – and giving Victorians the choice they deserve at the end of their life.'²⁴⁵ Health Minister Jill Hennessy claimed that the legislation created a 'a rigorous process with safeguards embedded at every step to ensure that only those who meet the eligibility criteria and who are making an informed, voluntary and enduring decision will be able to access voluntary assisted dying'.²⁴⁶ Proponents claimed it is the most conservative euthanasia legislation in the world. The legislation passed a conscience vote in Victoria's lower house in October 2017, however received more opposition in the upper house – which amended the timing from 12 to six months expected to live (with exemptions for people with neurodegenerative conditions). The upper house narrowly passed the law in November 2017 after a 28 hour sitting.²⁴⁷

Opponents of voluntary assisted dying objected to the existence of the state sanctioning death, claimed the bill lacked adequate safeguards to protect vulnerable individuals, raised concerns

243 http://www5.austlii.edu.au/au/legis/vic/num_act/vada201761o2017348/

244 <https://www.parliament.vic.gov.au/lsc/inquiries/inquiry/402>

245 <https://www.premier.vic.gov.au/debate-of-historic-voluntary-assisted-dying-bill-starts/>

246 [http://hansard.parliament.vic.gov.au/?IW_INDEX=Hansard-2017-2&IW_FIELD_TEXT=SpeechIdKey%20CONTAINS%20\(21-09-2017_assembly_7\)%20AND%20OrderId%20CONTAINS%20\(0\)&LDMS=Y](http://hansard.parliament.vic.gov.au/?IW_INDEX=Hansard-2017-2&IW_FIELD_TEXT=SpeechIdKey%20CONTAINS%20(21-09-2017_assembly_7)%20AND%20OrderId%20CONTAINS%20(0)&LDMS=Y)

247 <http://www.abc.net.au/news/2017-11-22/euthanasia-victorian-parliament-passes-assisted-dying-laws/9156016>

that the law could be extended in future, called for palliative care services to be improved first, and argued that doctors should heal and not kill people.²⁴⁸ Former Prime Minister Paul Keating declared that 'No matter what justifications are offered for the bill, it constitutes an unacceptable departure in our approach to human existence and the irrevocable sanctity that should govern our understanding of what it means to be human.'²⁴⁹ Liberal MP Bernie Finn argued that the proposed bill was 'deeply, deeply flawed,' pointing to issues related to individuals with treatable mental health issues, the ability for an interstate resident to take advantage, and questioned the ability for doctors to make the decision.²⁵⁰ The Australian Medical Association (Victoria) is against voluntary assisted dying on the basis 'that doctors should not be involved in interventions that have as their primary intention the ending of a person's life.'²⁵¹

	Criteria	Conclusion	Comment
1	Demonstrable, evidence-based need	Yes	The End of Life Choices Inquiry established evidence of community demand for additional choices in relation to dying, including from various submissions and site visits and hearings. The inquiry pointed to the status quo, in which individuals' euthanise with the help of family in an unregulated and illegal manner, however the family does not receive harsh penalties.
2	Public interest parameters	Yes	The stated public interest in the assisted dying legislation is to increase patient 'choice' at the end of their life. Notably, however, this is difficult to balance this against concerns about decreasing the value and dignity of human life, as well as issues with safeguarding.
3	Consideration of alternatives	Yes	The End of Life Choices Inquiry considered various alternatives for the final stages of life during their initial inquiry in 2015-16, including improving palliative care.
4	Implementation choices	Yes	The Ministerial Advisory Panel considered how to create an appropriate framework to successfully implement voluntary assisted dying in Victoria.
5	Cost-benefit analysis	No	The Victorian Government does not appear to have undertaken a cost-benefit analysis of the policy.
6	Policy design framework	Yes	The Victorian Government established various mechanisms within the legislation, such as the Voluntary Assisted Dying Review Board, that oversees how the policy is implemented and is responsible for ongoing monitoring, research, and assessment of the policy.
7	Further consultation	Yes	Following the initial parliamentary inquiry, the Andrews Government undertook further consultation through the Ministerial Advisory Panel.
8	Produce green then white paper	Yes	The End of Life Choices Inquiry included a formal discussion paper process followed by a final report, akin to a green and white paper process
9	Develop legislation	Yes	The Victorian Government developed the Voluntary Assisted Dying Bill 2017 which was extensively debated in both houses of parliament.
10	Communication	Yes	The high level of engagement with inquiries and public debate about the policy indicates that was communicated to the public during the process. Nevertheless, it is difficult to determine whether the policy has been successfully communicated before the law comes into effect next year.
		9/10	

248 A summary of opposition arguments can be found here <https://theconversation.com/four-reasons-victorian-mps-say-no-to-assisted-dying-and-why-theyre-misleading-87168>

249 <https://www.smh.com.au/opinion/paul-keating-voluntary-euthanasia-is-a-threshold-moment-for-australia-and-one-we-should-not-cross-20171019-gz412h.html>

250 https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2017/Council_Daily_Extract_Thursday_2_November_2017_from_Book_18.pdf

251 <https://amavic.com.au/media/Archived-Media-Releases/2017-media-releases/ama-victoria-statement-on-the-voluntary-assisted-dying-bill>
<https://ama.com.au/system/tdf/documents/AMA%20Position%20Statement%20on%20Euthanasia%20and%20Physician%20Assisted%20Suicide%202016.pdf?file=1&type=node&id=45402>

