

Supporting policymaking accountability by optimising Statements of Public Interest

Lessons Learned Report



Message from the CEO



Government policies have a unique ability to improve the lives of Australians. The need for effective policymaking processes has never been higher given the complexity of the challenges we face today – from rapid technological change through to managing population growth.

In my role as the CEO of the Susan McKinnon Foundation, I am privileged to advance our vision for Australia to have the world’s most effective governments, focused on the long-term interests of the Australian community. Working to ensure our legislative policymaking processes are working effectively to support high quality parliamentary debate and decision making is one such way SMF are delivering on this aspiration.

As former Premier of New South Wales I am proud that NSW is the first Australian jurisdiction to adopt the Statement of Public Interest as a policymaking accountability mechanism, demonstrating parliament’s ongoing commitment to supporting legislation that is evidence-based, transparent and in the public interest.

This report is a summary of a program of work led by the Susan McKinnon Foundation (SMF), in collaboration with Blueprint Institute and Per Capita, focused on optimising the status, quality and usefulness of the Statement of Public Interest (SPI) in NSW Parliament.

This project is a continuation of the important work of former NSW Treasury head, Percy Allan, who sadly passed away in October 2024. As Founder and Director of the Evidence-Based Policy Research Program (EBPRP), Percy’s tireless advocacy was instrumental in the NSW Legislative Council’s adoption of a Standing Order for all government bills to answer a Statement of Public Interest questionnaire that addresses the need and evidence base for the bill.

The Susan McKinnon Foundation will pay tribute to Percy’s extraordinary legacy by naming our program of work on optimising the Statement of Public Interest in his honour.

SMF is looking forward to working with the NSW Parliament and NSW public sector to support their adoption of these recommendations. We believe that all jurisdictions can learn from NSW’s experience with the SPI as one example of mechanisms to increase accountability for evidence-based policymaking.

A handwritten signature in black ink, appearing to read 'Mike Baird', written in a cursive style.

Mike Baird
Susan McKinnon Foundation CEO

Contents

Executive Summary	4
The role of accountability mechanisms in supporting policy quality	6
The Statement of Public Interest (SPI)	8
Key Lessons: Opportunities to optimise the Statement of Public Interest	10
Summary of recommendations for improving the status, quality and usefulness of the SPI in NSW Parliament	23
Conclusion	24
Reference List	25
Appendices	26



Executive Summary

The role of accountability mechanisms in supporting policy quality

High quality policymaking is essential for the wellbeing and progress of Australian society. Transparent, high quality policymaking also enhances public trust in government decisions.

Improving the quality of policy in Australia is of fundamental importance in the face of declining public trust in political institutions and the increasing complexity of challenges facing contemporary Australia.

The Australian government, and other states and jurisdictions, have established accountability mechanisms to ensure high quality policymaking processes are followed for policies of significance.

This includes ensuring that policy:

- Responds to an identified problem or need
- Incorporates stakeholder consultation
- Considers a range of policy options and analyses the costs and benefits of each option
- Has a clear evidence-base to support the need/problem and the policy/solution
- Has a clear implementation pathway
- Includes a process to evaluate the policy

In 2022 the NSW Parliament Legislative Council took a position to support high quality, transparent and evidence-based policymaking in the public interest, by becoming the first Australian jurisdiction to adopt the Statement of Public Interest (SPI) as an accountability mechanism to apply to all government legislation introduced into Parliament.

Supporting policymaking accountability in New South Wales with the Statement of Public Interest

The Statement of Public Interest (SPI) was introduced in the NSW Parliament in 2022 to help ensure a rigorous process of explanation, justification and consultation would apply to any government legislation.

The process of developing legislation is a critically important component of wider public policymaking. Ensuring that legislation is accompanied by a clear statement of need, objective, the options considered and their relative costs and benefits, stakeholders consulted, and detail of proposed implementation provides public assurance that the policymaking process has been conducted in a way that maximises public value.

The objectives of the SPI are to resource members of the Legislative Council to support informed decision making on proposed bills and to demonstrate sound policy making.

However, research undertaken by the Susan McKinnon Foundation (SMF), in collaboration with independent think tanks Blueprint Institute and Per Capita, demonstrates that many SPIs tabled in Parliament are not of a high enough quality to deliver on these stated objectives.

The research found that 1 in 4 government SPIs sampled did not include the necessary information to demonstrate the quality of policymaking processes behind the

Bill, not necessarily because these practices weren't in use, but rather that the quality of analysis and evidence provided in the SPI was insufficient.

This report presents the key lessons gained through a year-long program of engagement, research and assessment to identify key recommendations to optimise the status, quality and usefulness of the SPI in NSW Parliament, with the ultimate aim of supporting purposeful, transparent and evidence-based policymaking practices.

Key lessons and recommendations

This report outlines five key lessons of the value and usefulness of the SPI as a mechanism to support high quality legislative policymaking processes, and makes six associated recommendations to overcome identified challenges to the SPI delivering on its objectives.

Key lessons

- 1 The SPI is regarded by parliamentarians as a valuable policymaking accountability mechanism, but utilisation in the Legislative Council is low
- 2 The usefulness of the SPI is limited because it only applies to government bills in the Legislative Council, and not the Legislative Assembly
- 3 The quality of SPIs tabled in the NSW Legislative Council are not always sufficient to fulfil the stated objectives of the SPI to inform decision making and demonstrate sound policy making
- 4 There are limitations to the wording of SPI questions that affects the usefulness of the information provided
- 5 There is a need to enhance the accessibility and awareness of the SPI to improve the transparency of policymaking for public audiences

Recommendations

- 1 The NSW Legislative Council Procedure Committee reviews the operation of the SPI in the Legislative Council on a regular basis to ensure compliance and quality, and support enhanced utilisation by members of parliament
- 2 The NSW Legislative Assembly adopts the SPI requirement for government bills in its standing orders
- 3 Develop comprehensive guidelines to support those developing SPIs, including updating the *Template Statement of Public Interest and Example Statement of Public Interest* included in the Premiers Memorandum (M2022-23)
- 4 The NSW Government focus its efforts to improve the consistency and quality of SPIs as part of their ongoing commitment to supporting high quality policymaking practices and informed political debate
- 5 Refine and update SPI questions to address identified problem areas and gaps
- 6 Support greater accessibility and awareness of the SPI

The role of accountability mechanisms in supporting policy quality

High quality policymaking is essential for the wellbeing and progress of Australian society. Improving the quality of policy in Australia is of fundamental importance in the face of declining public trust in political institutions and the increasing complexity of problems facing contemporary Australia.

Increased transparency and accountability of policymaking processes are key to improving public trust in government decisions. This has driven the adoption of policy accountability mechanisms such as Regulatory Impact Statements (RIS)

and Legislative Impact Assessments (LIA) in Australia.

In the UK, the 2023 Independent Review of Governance and Accountability found that transparency plays a critical role in ensuring the public has confidence and trust in government decision making. The review recommended that 'when a policy decision is made and announced, the evidence and data that underpin the decision should be published alongside the decision itself' as a 'major step forward in accountability'.¹

The Australian Government and state/territory jurisdictions have processes in place to ensure high quality policymaking processes are undertaken in the design and development of 'significant' policy proposals; nominally 'those that would result in a more than minor change in behaviour or impact for people, businesses or community organisations'.²

Such processes work to ensure the formulation of policy meets specific criteria, including that it:

- **Responds to an identified problem or need:** the policy addresses an evidence-based particular problem or need, or opportunity to strengthen outcomes for citizens
- **Has clearly defined objectives:** the policy has clear objectives that demonstrate what outcomes the policy aims to achieve for which sections of the community, how this is in the public interest, and how delivery against these objectives will be measured and evaluated
- **Analyses a range of options:** In-depth comparative analysis of all available policy options (including doing nothing), via:
 - Cost/benefit analysis including sensitivity to key assumptions (where appropriate)
 - Risk analysis identifying what risks were identified and how have these been mitigated
- **Has a clear evidence-base:** An evidence-based policy process should be able to point to the evidence and data that underpin the policy problem, the policy options considered, and the decision making process and articulate the connection between the evidence and the chosen policy.
- **Incorporates stakeholder consultation:** Those affected by a policy decision have a voice in the design of the policy, with consultation held early in the policymaking process using consultation processes that support diverse and inclusive perspectives to inform the development of the policy where appropriate and practical
- **Has a clear implementation pathway:** the policy has a clear and practical plan for implementation including timelines, resources and capabilities required, governance mechanisms, and identifies who is responsible for various aspects of the policy's implementation.
- **Includes a process to evaluate the policy's impact:** impact metrics should be defined at the beginning of a policy's development, not as an afterthought, and be focused on measurable outcomes that can be refined as needed throughout the process. This policy should identify the intended impact of the policy, how this will be measured, and the process for evaluation with the intent to support continuous improvement to meet the policy's intended objectives.³

1 UK Government 2023, Independent Review of Governance and Accountability in the Civil Services: The Rt Hon Lord Maude of Horsham

2 Australian Government 2023, Australian Government Guide to Policy Impact Analysis, Department of Prime Minister & Cabinet

3 Based on a synthesis of SMF's Enhancing Policy Quality program, Professor Kevin Whitshire's *Ten Criteria for a Public Policy Business Case*, the [Evidence Based Policy Research Project](#), and Australian Government and state/territory policymaking guidelines (see Reference List for further detail)

Table 1 provides an outline of the key questions asked of significant policy proposals in the Australian Government's Impact Analysis process, three jurisdictional Regulatory Impact processes (VIC, NSW & SA), and the NSW Statement of Public Interest process.

A key strength of the SPI is that it applies to all government legislation introduced to the NSW Parliament (not only policy deemed 'significant') and thereby provides a mechanism that applies broadly to ensure high

quality policymaking processes have been followed and are communicated in a consistent and transparent manner to all members of Parliament and the general public.

Table 1: Comparison of government impact analysis frameworks and the Statement of Public Interest

	Australian Government Impact Analysis	Regulatory Impact Statement (VIC Gov)	Regulatory Impact Statement (SA Gov)	Regulatory Impact Assessment (NSW)	Statement of Public Interest
Problem/need	What is the problem you are trying to solve and what data are available?	Why is the Government considering action? (problem analysis)	Problem analysis - Why the need to act?	What is the problem to be solved?	Why is the policy needed based on factual evidence and stakeholder input?
Objectives	What are the objectives, why is government intervention needed to achieve them, and how will success be measured?	What outcomes is the Government aiming to achieve (objectives)	Case for government action - What does the government aim to achieve?	What is the outcome to be achieved? Do objectives relate to the problem which has been identified?	What is the policy's objective couched in terms of the public interest?
Analysis/options	What policy options are you considering?	What are the possible different courses of action that could be taken (feasible options)	Identify feasible options - What courses of action could be taken?	Have a few options been considered, including non-regulatory alternatives? Has the status quo been considered as an option?	What alternative policies and mechanisms were considered in advance of the bill?
	What is the likely net benefit of each option?	What are the expected impacts (benefits and costs) of feasible options and what is the preferred option? What are the characteristics of the preferred option, including small business and competition impacts?	Impact analysis - What are the expected impacts of options and what is the preferred option?	Have financial, economic, social and environmental impacts been identified, including both direct and indirect costs and benefits?	What were the pros/cons and benefits/costs of each option considered?
Consultation	Who did you consult and how did you incorporate their feedback?		Consultation - Who will you consult about these options and how will you consult them?	Is consultation planned to occur throughout the regulatory development process? Will all stakeholders that may be affected by the options be consulted?	Were the views of affected stakeholders sought and considered in making the policy?
Implementation	What is the best option from those you have considered and how will it be implemented?	How will the preferred option be put into place (implementation plan)	Implementation strategy - How will the preferred option be put in place?	Does the implementation strategy clearly set out how the proposal would be implemented and enforced?	What are the timetable and steps for the policy's rollout and who will administer it?
Evaluation	How will you evaluate your chosen option against the success metrics?	When (and how) will the Government evaluate the effectiveness of the preferred option in meeting the objectives? (evaluation strategy)	Evaluation strategy - How will the effectiveness of the preferred option be tested?	Have monitoring and review requirements been included in the regulatory proposal?	

Source: Australian Government 2023, State of Victoria 2024, Government of South Australia 2022, NSW Government 2022

The remainder of this report outlines the identified strengths and weaknesses of the SPI as an accountability mechanism to support high quality policymaking processes,

and opportunities to optimise the SPI in NSW Parliament with the aim of supporting purposeful, transparent and evidence-based policymaking practices.

The Statement of Public Interest

A mechanism to support transparent and evidence-based legislative policymaking in the public interest

Between 2018 and 2022, research undertaken by the Evidence Based Policy Research Project (EBPRP)⁴ benchmarked 100 government policies against the established 'Wiltshire Criteria'.⁵ This research found that basic standards of evidence-based and consultation-informed policymaking had not been met by Australian federal and state governments.

The Statement of Public Interest (SPI) was conceived as a potential solution to these challenges. It aimed to ensure a more rigorous process of explanation, justification and consultation would apply to any government legislation.

What is a Statement of Public Interest (SPI)?

The Statement of Public Interest (SPI) is a policymaking accountability mechanism that is used in the NSW Legislative Council.

Standing Orders 136A and 137 require a Statement of Public Interest to accompany Government bills introduced in the Legislative Council in NSW Parliament.

An SPI ought to demonstrate consideration of the public interest and good process being followed in the development of legislative policymaking in NSW.

The objectives of the SPI are to resource members of parliament to support informed decision making on proposed bills and to demonstrate sound policy making.

The Statement of Public Interest must answer the following six questions that address the need and evidence base for the bill:

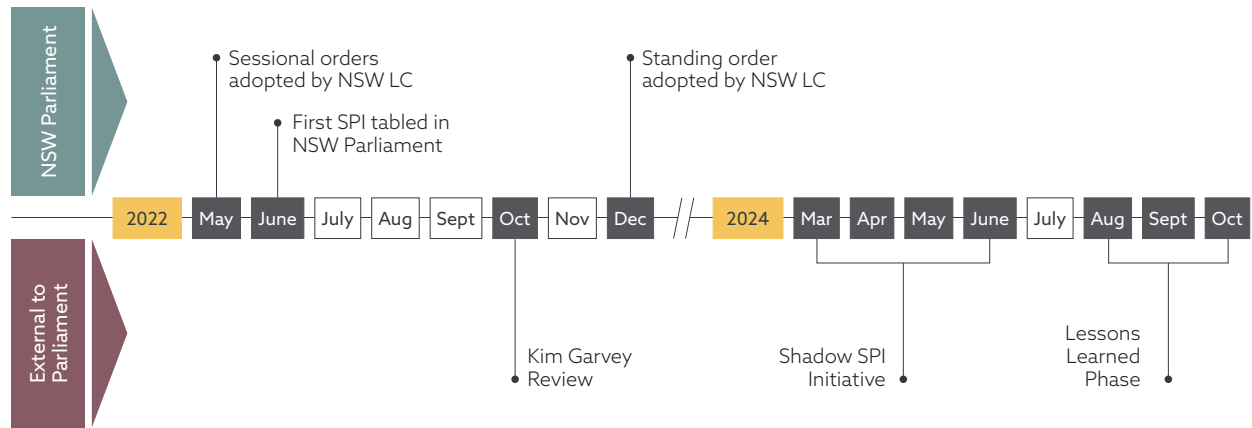
1. **Need:** Why is the policy needed based on factual evidence and stakeholder input?
2. **Objectives:** What is the policy's objective couched in terms of the public interest?
3. **Options:** What alternative policies and mechanisms were considered in advance of the bill?
4. **Analysis:** What were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

An SPI is tabled in the Legislative Council at First Reading when the bill is introduced.

⁴ The Evidence Based Policy Research Project (EBPRP) was an association of policy experts, led by Former Secretary of the NSW Treasury, Percy Allan, that sought to promote evidence-based and consultation-based policymaking. The EBPRP undertook a 3-year campaign to have the SPI introduced as a Standing Order in the NSW Legislative Council.

⁵ The 'Wiltshire Criteria' is a policymaking criterion developed by Prof. Kenneth Wiltshire AO and published by IPAA (2012) *Ten Criteria for a Public Policy Business Case*, Public Policy Drift.

Figure 1: SPI Timeline in NSW Parliament and activities external to Parliament



Source: Susan McKinnon Foundation

In May 2022, the NSW Legislative Council adopted a Sessional Order for an SPI to apply for all NSW Government bills which was trialled for six months. A permanent Standing Order was subsequently adopted by the NSW Legislative Council in December 2022.

Both the then government and then opposition were highly supportive of the need and usefulness of the SPI to the legislative policymaking process in NSW:

Since the first Statement of Public Interest was tabled in the NSW Legislative Council in June 2022, over 160 SPIs have been produced to support transparent and evidence-based legislative policymaking in NSW.

"There is significant benefit to the statement of public interest. When the standing orders were amended, I made the observation that it was important to give clarity to the things being done or sought to be achieved in the bills before the House. It gives members the opportunity to interrogate potential aspects of bills that were obscure. It facilitates a better understanding of the implementation of the legislation and a better understanding of those who have drafted and participated in its preparation."

- The Hon Damien Tudehope MLC, Leader of the Government in the Legislative Council (2022)

"Labor...support the new addition to the way in which we consider government bills in this place—that is, through the provision of the statement of public interest. We welcome the Government's embrace of that change and look forward to better and more informed decision-making through that process into the future."

- The Hon Penny Sharpe MLC, Leader of the Opposition (2022)

Key Lessons

Opportunities to optimise the Statement of Public Interest

This section outlines the key lessons from a program of work led by the Susan McKinnon Foundation (SMF) since 2023 to optimise the status, quality, and usefulness of the SPI in NSW Parliament with the ultimate aim of supporting purposeful, transparent and evidence-based policymaking practices.

This work has been undertaken in response to an independent review, led by former senior budget officer of the NSW Treasury Kim Garvey, that assessed the adequacy of the information included in the first 34 Statements of Public Interest tabled in the NSW Legislative Council.⁶

Garvey’s research found that while the SPI had been accepted by members of the Legislative Council (MLC) as a useful governance mechanism to support transparency and inform parliamentary debate, 1 in 3 (approximately 30%) of SPIs tabled in the NSW Legislative Council between June and October 2022 were below standard and did not adequately respond to the SPI’s six questions.

SMF’s program of work has included:

- Delivering the Shadow SPI Initiative (see Image 1) in NSW Parliament in collaboration with think tanks Blueprint Institute and Per Capita

- Engagement with members of the Legislative Council in NSW Parliament
- Engagement with NSW parliamentary staff
- Quality assessments of SPIs tabled in NSW Parliament in collaboration with Blueprint Institute and Per Capita.

Five key lessons have been identified from this work, focused on understanding the barriers and opportunities to the SPI delivering on its stated objectives to support informed decision making and demonstrate sound policy making.

About the Shadow SPI Initiative

The Shadow SPI Initiative sought to raise expectations of what parliamentarians should expect in an SPI. The objectives were to improve the quality of tabled SPIs and their usefulness, and to shine a light on the importance of transparency in legislative policymaking.

The Shadow SPI Initiative produced a total of 8 Shadow SPI for substantive bills submitted to the Legislative Council between March and June 2024. Each Shadow SPI was collectively developed by a collaborative team from two ideologically differentiated think tanks (Per Capita and Blueprint Institute) and was intended to be utilised as a companion to the

tabled Government SPI in the Legislative Council of NSW. The Shadow SPIs aimed to demonstrate a comprehensively answered SPI, within the constraints of time available and publicly accessible information.

Each Shadow SPI was distributed to all members of the Legislative Council in advance of the second reading debate and made publicly available via the [Shadow SPI website](#).

The Shadow SPI initiative aimed to create a constructive, public example of effective and transparent evidence-based policymaking and to support the awareness, knowledge and skills needed to produce high quality SPIs.



Image 1: Shadow SPI – Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Reasons) Bill 2024

6 Garvey 2022, Evidence Based Policy Research Project: Analysis of Statements of Public Interest

Key Lesson

1

The SPI is regarded by parliamentarians as a valuable policymaking accountability mechanism, but utilisation in the Legislative Council is low

Research and engagement with Members of the Legislative Council in NSW suggests the SPI is regarded as a valuable tool that has the potential to deliver on its purpose to resource members to support informed decision making on proposed bills and demonstrate sound policymaking.

Particularly for opposition and crossbench MPs, the SPI is a useful resource to understand and question key policymaking processes informing a bill and hold the government to account via the parliamentary debate.

However, there is limited evidence that SPIs are being used, as intended, to inform the parliamentary debate. Analysis of Hansard shows that despite over 160 SPIs being tabled since June 2022, SPIs have only been referenced in the second reading debate in relation to 11 bills. As is outlined below (see key lesson 2), this low utilisation is likely to be – at least in part – the result of many SPIs only being available for a short period for many bills.

When referenced, the SPI has been used in the debate to good effect by MPs on significant pieces of legislation to question the public interest nature of the bill, the adequacy of consultation undertaken in relation to the bill, and the cost/benefit analysis underpinning the bill (see highlighted quotes).

Further effort is needed by government to improve the consistency and quality of SPIs tabled in parliament, to ensure the SPI can continue to be used to inform the parliamentary debate and ensure government decision making is informed by high quality, evidence-based policymaking processes.

“As I have already stated, the problem is not just in the Government statement of public interest; it is in the Government’s proposal. There was simply no supportable evidence presented in the Government statement, in the second reading speech or at the inquiry into the bill. We just do not have the basis for the bill. Instead, we have a lot of problems, a lot of opposition and a lot of reasoned arguments as to why this bill would be harmful to the criminal justice system.”

2024: Ms Sue Higginson MLC, Greens member second reading debate on the Jury Amendment Bill 2024

“The statement of public interest attached to this bill was a poor excuse and shows why the Chamber should vote this legislation down. One key question is: Why is the policy needed based on factual evidence and stakeholder input? The Government did not seek to consult with anyone, because this is part of its ideological agenda of attacking nurses, teachers,

paramedics, health professionals and prison officers, who have gone on strike for the first time in a decade. The second question is: What is the policy’s objective couched in terms of the public interest? The Government cannot even make a coherent statement of public interest in accordance with the standing orders of this House, because there is no public interest in the bill.”

2022: The Hon Courtney Houssos MLC, Labour Shadow Minister second reading debate on the Industrial Relations Amendment (Dispute Orders) Bill 2022

"In the statement of public interest tabled by the Deputy Leader of the Government, the bill is justified by asserting that a consolidated bill is necessary to avoid the Parliament considering numerous pieces of legislation. There are other parts of the statement of public interest that address the actual public interest. However, suiting the perceived convenience of members of Parliament should not be considered amongst them. Frankly, it is lazy and dangerous for a government that is just over six months old to seek to amend 15 Acts and regulations through a miscellaneous bill with the stated public interest being that the Parliament would otherwise have to do more work—we members would have to do the thing we are here to do: our job."

2023: Ms Sue Higginson MLC, Greens member second reading debate on the Justice Legislation Amendment (Miscellaneous) Bill 2023

"In the Statement of Public Interest accompanying this bill, the question was asked: What were the pros/cons and benefits/costs of each option considered? The Minister answered: The Bill does not impose any appreciable cost or burden on the public or any group of the public. As such, no alternative policies and mechanisms have been considered or analysed. No costs? That is just fantasy. It is like magic dust being sprinkled across the Parliament. No cost out of this bill? Try telling that to the Hunter Valley, with its 75,000 coal-reliant jobs. Try telling that to the Muswellbrook and Singleton local government authorities [LGAs], where three out of every five homes are coal-income reliant."

2023: The Hon Mark Latham MLC, One Nation member second reading debate on the Climate Change (Net Zero Future) Bill 2023

"I note that the Government's statement of public interest on this bill provides that consultation is being carried out with the Ombudsman's office and other New South Wales Government agencies. I was informed by the Minister's office today that the consultation included Aboriginal affairs. However, when we consider the extraordinary consultation that took place before the 2014 changes to the Ombudsman Act, it is not good enough that there has been no consultation carried out with Aboriginal people for this change."

2024: Ms Cate Faehrmann MLC, Greens member second reading debate on the Ombudsman and Other Legislation Amendment Bill 2024

Recommendation

1

The NSW Legislative Council Procedure Committee reviews the operation of the SPI in the Legislative Council on a regular basis to ensure compliance and quality, and support enhanced utilisation by members of parliament

Key Lesson 2

The usefulness of the SPI is limited because it only applies to government bills in the Legislative Council and not the Legislative Assembly

Delivery of the Shadow SPI Initiative in NSW Parliament highlighted a key procedural limitation that undermines the usefulness of the SPI as a policymaking accountability tool.

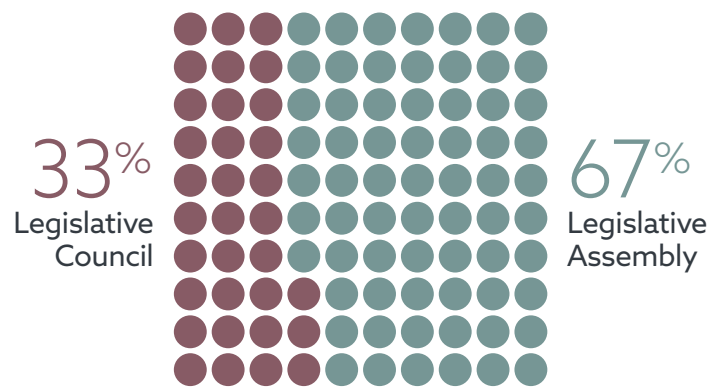
At present, an SPI is only required to be tabled in the Legislative Council and not the Legislative Assembly which is where the majority of government bills are introduced into Parliament (see Figure 2).

In the current session of Parliament 67% of all government bills originated in the Legislative Assembly, where an SPI is not required.⁷

An SPI is formally tabled at first reading when a government bill is introduced into the Legislative Council. For bills that originate in the Legislative Council, while the debate is adjourned for five clear/calendar days after second reading, the SPI is available to all members of parliament for this same period so can meaningfully inform the parliamentary debate.

However, for bills that originate in the Legislative Assembly, the SPI is not required to be tabled under current Standing Orders when introduced in the Assembly. In practice this means members do not have access to the SPI as a tool to inform decision making until after the bill has passed through the Legislative Assembly and is introduced into the Legislative Council.

Figure 2: Percentage of bills introduced to the NSW Parliament by house of origin



Source: Susan McKinnon Foundation analysis from NSW Parliament website (Current session bills - 9th May 2023 to 31st July 2024)

When bills pass from the Legislative Assembly to the Legislative Council, Standing Orders are suspended to 'allow the passing of the bill through all its remaining stages during the present or any one sitting of the House', due to the bill having already been debated in the lower house.

This means that not only is the SPI unable to be used to inform the debate in the Legislative Assembly, it is only available for a very limited time to inform the debate on the bill once it is introduced to the Legislative Council.

⁷ The 58th Parliament commenced Tuesday 9th May 2023 and is ongoing. Analysis includes bills introduced between 9th May and 31st July 2024.

For bills that originated in the Legislative Assembly, analysis of the time period between the SPI being tabled in the Legislative Council and the second reading debate

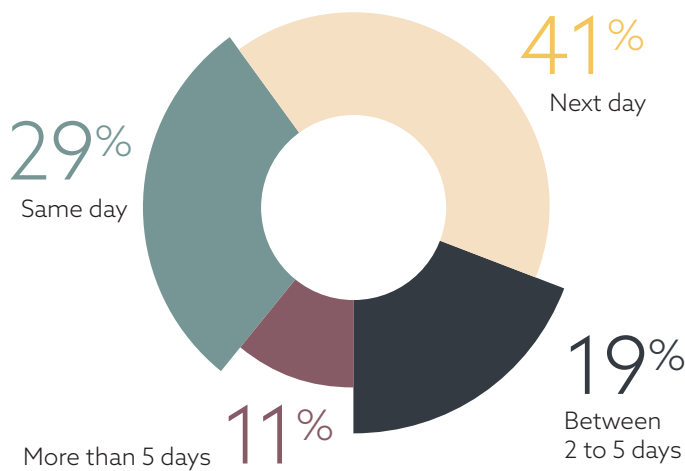
commencing shows that 70% of bills were debated on the same day or the following day as the SPI was tabled (Figure 3).⁸

In one instance, for the *Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024*, the bill was debated in the Legislative Council just 6 minutes after the SPI was tabled. Another example is the *Children and Young Persons (Care and Protection) Amendment Bill 2024* (Figure 4) which was debated in the Legislative Council just 18 minutes after the SPI was tabled.

What this suggests is that for almost two thirds of bills passing through Parliament, the ability of the SPI to be used to inform the debate is significantly undermined. While the SPI still offers a useful description of the policymaking process, its effectiveness as a tool to hold government to account is significantly undermined as it is only available to members for such a short period of time. This limits the amount of time the SPI is available to inform members and undermines the usefulness of the tool to support informed decision making.

Introducing the SPI into the Legislative Assembly via adoption of a standing order would address this procedural limitation and ensure that the SPI is made available as an effective and useful policymaking accountability mechanism for all members of parliament, whether a bill originates in the Legislative Council or Legislative Assembly.

Figure 3: Analysis of 73 bills that originated in the Legislative Assembly and moved to the Legislative Council – period of time between SPI tabled and second reading debate by percentage of bills



Source: Susan McKinnon Foundation analysis from NSW Parliament website (Hansard and House Papers)

Recommendation

2

The NSW Legislative Assembly adopts the SPI requirement for government bills in its standing orders

8 Analysis of Hansard by bill in Legislative Council

Key Lesson

3

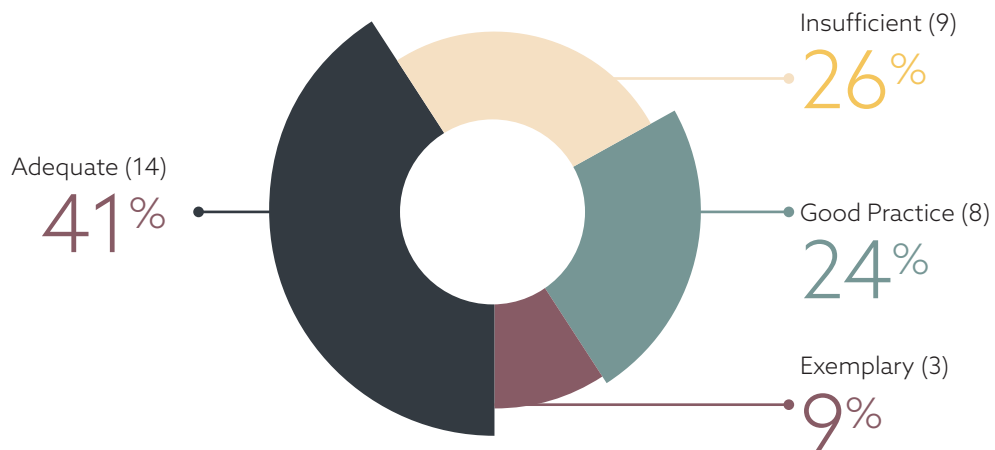
The quality of SPIs tabled in the NSW Legislative Council is not always sufficient to fulfil the stated objectives of the SPI to inform decision making and demonstrate sound policy making

The SPI is a relatively new parliamentary process, and it is expected that there may be some variation in quality while public servants, Ministers and their staff, and parliamentarians become familiar with these new requirements.

However, analysis of a random selection of 34 SPIs tabled in NSW Parliament between May 2023 and June 2024 shows inconsistency in the quality of tabled SPIs and consistent challenges in answering particular questions, which suggests the need for additional guidance for those developing SPIs to support the consistent provision of high quality SPIs.

Assessment of 34 SPIs tabled in NSW Parliament against a quality assessment rubric (Appendix A) demonstrates a high level of discrepancy in overall quality (see Appendix B for summary of analysis), with over a quarter of SPIs assessed as *insufficient*.

Figure 4: Quality assessment of 34 SPI against assessment criteria



Source: Susan McKinnon Foundation

Only 3 SPIs were assessed as meeting an *exemplary* information standard; providing a clear and comprehensive outline of the policymaking process and thoroughly justifying the need and evidence-base for the bill. An *exemplary* SPI shows the progression of thinking

through the policymaking process, and connects the proposed policy to a specific problem or need (see Appendix E for an example of an SPI assessed as *exemplary*).

Extracts from assessments of *exemplary* responses to specific SPI questions for these bills is as follows⁹:

24-hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023 – assessment of response to Objectives question:

The SPI clearly states the objectives of the policy, which are to increase the vibrancy of the night-time economy, live performance sector, and outdoor public spaces by encouraging venue operators to innovate and expand. It connects these objectives to the need for the policy by emphasising the importance of adapting to community expectations and supporting the growth of the live music sector in NSW. The SPI effectively links the objectives of a fit-for-purpose regulatory ecosystem with improvements and benefits for businesses and the community, demonstrating how these changes align with the public interest.

Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024 – assessment of response to Pathway question:

The SPI outlines the proposed implementation pathway for the Bill well, including timelines for commencement and the roles of various government agencies involved in the process. It notes that key provisions will commence on the date of assent, while others will be proclaimed after procedures are in place and explains the reason is to ensure procedures and processes are thoroughly considered before the commencement of the offence. The SPI also notes the collaboration between affected agencies, such as SafeWork NSW and the Department of Justice, to ensure a successful rollout.

Emergency Services Levy Insurance Monitor Bill 2024 – assessment of response to Analysis question:

The Government SPI provides an exemplary response to this question clearly setting out the pros and cons of each option considered. This precisely meets the stated intention and purpose of producing an SPI: to provide Members with information that will assist them to make an informed decision as to how to deal with the bill, and to demonstrate sound policymaking...Explanation as to why the choice to implement this policy through the Bill, as opposed to taking no action, is set out in the options section of the Government SPI. The Government SPI analysis section supports the Government’s argument for reform by clearly identifying the merits and demerits of each option, identifying the key stakeholders affected by each option, and couching them in terms of the public interest. The Government SPI plainly outlines potentially competing interests: protecting insurance policy holders, and reducing costs incurred by the Government (and thus by the public). In doing so, the Government SPI provides a thorough analysis for Members to consider when making an informed decision as to how to deal with the Bill.

⁹ All responses are from independent analysis undertaken by Blueprint Institute and Per Capita for SMF, excluding the commentary on the Emergency Services Levy Insurance Monitor Bill 2024 which is from the Shadow SPI developed by Per Capita for this bill.

Assessment of the quality of responses to the six SPI questions highlighted that lower quality responses were more likely to be provided to specific questions; the *Analysis, Need and Options* questions (Table 2).

Table 2: Average scores by question for 34 SPI assessed against quality assessment criteria

	Average score	Comparative average ¹⁰
Need	4.5	50%
Objectives	5.5	61%
Options	1.8	59%
Analysis	2.5	42%
Pathway	4.0	66%
Consultation	4.0	66%
Total	22.3	(Adequate)

Source: Blueprint Institute 2024

Many SPIs were found to have a lack of genuine comparative analysis and discussion provided in response to the *Options and Analysis* questions, while responses to the *Need* question functioned more as a description of the policy rather than an indication to the Parliament and the public of the need and evidence-base for the policy.

Energy Legislation Amendment (Clean Energy Future) Bill 2024 – assessment of response to Need question:

The SPI's 'Need' section simply outlines the collated legislation amendments to the five Acts and outlines the key objective of each amendment. The SPI provides zero context or description of the problems and the need to address them, does not explain the necessity of the amendments, nor provides any factual evidence or evidence of stakeholder consultation. It does not outline the affected parties or any public benefits.

Conversion Practices Ban Bill 2024 – assessment of response to Analysis question:

The Government SPI provides no comparative analysis between policy options. The SPI acknowledges that "options in criminal law, civil law, and health professional regulation" were considered in the formation of the Bill, but provides no detail on what those options would look like, or why they were not chosen. Similarly, the SPI gives no indication for why the graduated

intervention structure in the Bill was chosen. An improvement on this SPI would be to outline clear policy options in the previous section and to conduct a genuine comparative analysis of each of those options in addressing the need for the Bill—with consideration to the pros and cons of each, and reasoning given for why the policy in the Bill was progressed.

High Risk Offenders Legislation Amendment Bill 2023 – assessment of response to Options question:

The SPI merely states that only legislative amendments can address the issues driving the Bill, which is a vague and inadequate explanation for the legislative choice in the Bill. The SPI fails to outline any alternate options considered in the formation of the Bill—including the option of maintaining the status quo—and

does not provide any description of the policy option contained within the Bill. This section of the SPI has significant potential to improve, starting with a clear outline of all policy options considered, with thoughtful reasoning for why legislative action was appropriate to meet the need for the Bill.

¹⁰ Note: The comparative average represents the differential scores applied to each SPI question in the assessment rubric (see Appendix A)

While the *Objectives, Pathway and Consultation* questions were, on average, answered to a higher quality, there were consistent challenges identified including a lack of planning for review and evaluation of policy, and a need for greater detail on the consultation process (i.e. who, how, when) and how stakeholder feedback impacted on policy making.

High Risk Offenders Legislation Amendment Bill 2023 – assessment of response to Objectives question:

The SPI merely states that the amendments in the Bill are in the public interest, without explaining how the functions of the Bill serve the public interest as linked to the need for the Bill. An exemplary SPI would have clarified that there is a public interest in preserving freedom from harm, in this case family members in domestic violence situations, and that that interest is being promoted by establishing measures to prevent repeat incidents of escalating domestic violence from offenders considered at high-risk of recidivism. The SPI should have also provided specific examples of how this public interest would be carried out by the function of the Bill, such as by the Bill sending out a strong message to potential offenders that such behaviour is unacceptable. This section of the SPI would also be appropriate to discuss the competing public interests of freedom from harm (the problem the Bill is trying to address) and freedom from cruel and unusual punishment (the risk posed by implementing too punitive a policy).

Paintball Amendment Bill 2023 – assessment of response to Pathway question:

The SPI explains that the Minister for Better Regulation and Fair Trading is responsible for administering the Act, with support from the Department of Customer Service. However, it does not specify when the provisions will take effect or outline the steps required for their implementation.

In responding to the questions in the SPI, there is need for a clearer link to be made between the articulation of the problem and the proposed solution, including the evidence used to make the case and assessment against other policy options. Supporting those developing SPIs to make these connections when answering the SPI questions requires additional guidance beyond what is currently provided (see *Existing Guidance on the SPI* section on page 18). For example:

- For the *Options* question, supporting the provision of responses that include information about the alternative policy options considered would overcome the identified issue of responses being focused on legislative amendment being the only option. Kim Garvey's 2022 analysis similarly found that "the predominant response for the 'Options' question was that legislative amendment was the only option. Legislative amendment is the machinery to give effect to a policy option, not the option itself."
- For the *Analysis* question, guidance that enabled a greater articulation of genuine comparative analysis (including a 'no change' option, including how risks have been identified and mitigated or addressed in the development of the legislation, would overcome the identified issue of a lack of risk analysis in SPIs or this information being

First Home Buyer Legislation Amendment Bill 2023 – assessment of response to Consultation question:

The SPI indicates that the Bill implements the Government's election commitments. However, it does not provide any details on the consultation process or how stakeholder feedback was sought and considered in making the policy.

incorrectly located in the *Need or Objectives* questions, which is not the purpose of these questions.

- For the *Need* question, supporting responses that move beyond merely describing the bill and identifying an issue and evidence base, to a focus on the public interest nature of the policy that demonstrates the connection between the issue, evidence and policy response.

See Appendix D for an example of the type of guidance material that could be provided to support those developing SPIs.

The quality of SPIs may also be higher if they are developed alongside the policymaking process by those responsible for that process, rather than at the end of the process prior to legislation being introduced. This would ensure that the SPI accurately captures what has occurred in each question and also acts as a prompt to policymakers to consider these key elements of the policymaking process.

For those responsible for developing SPIs, having greater clarity around the SPI process and the types of information and evidence that is required for inclusion in an SPI will enable them to build this information collection into their internal processes and ensure completing an SPI does not become an onerous process.

Existing guidance on the SPI

Premiers Memorandum M2022-03 **Statements of Public Interest** (see Appendix C) provides a description, detailed outline, overview and supporting resources about the SPI process, published on the Department of Premier and Cabinet website.

Included in this guidance material is a **Template Statement of Public Interest** to be used by agencies responsible for preparing a SPI, which contains the following instruction:

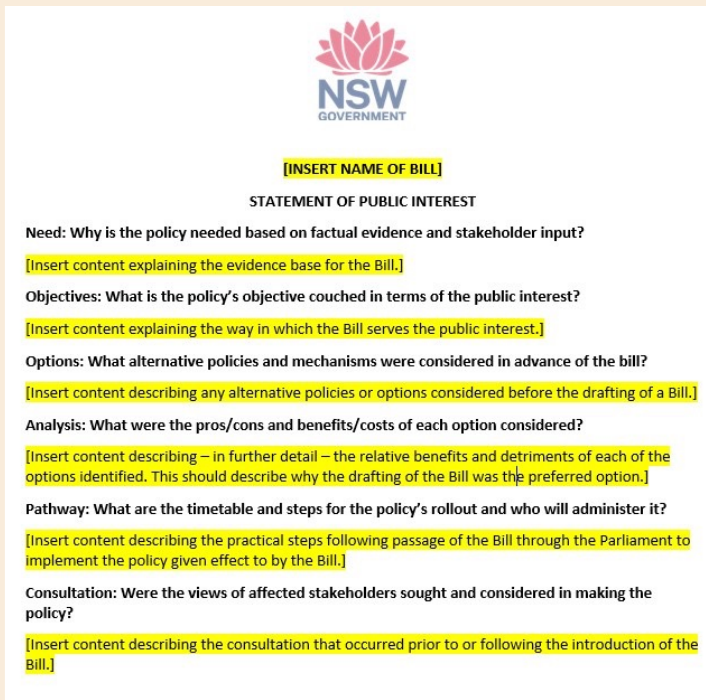


Image 2: Template Statement of Public Interest

Source: NSW Government 2022

An **Example Statement of Public Interest** is also provided for additional guidance. However, this review process has identified opportunities to strengthen the information

provided in this example SPI to better articulate the quality of information that is required for an SPI to fulfil its objectives.

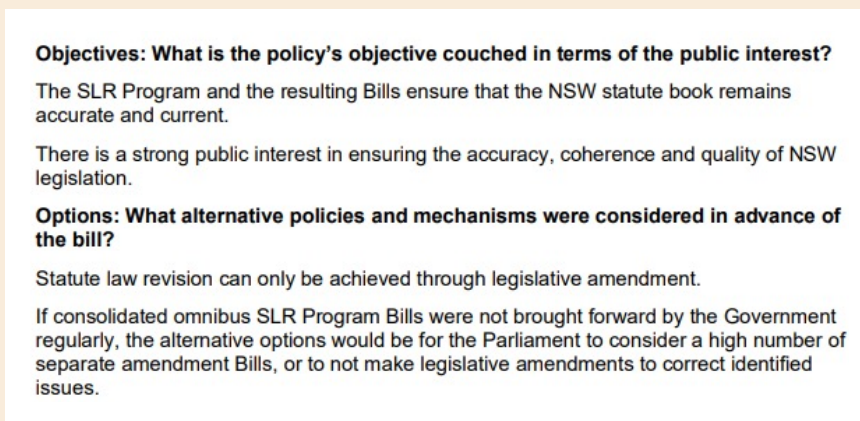


Image 3: Questions from Example Statement of Public Interest

Source: NSW Government 2022

Providing additional guidance to those responsible for developing SPIs would help ensure that all SPIs tabled in Parliament include information to a high quality standard (good practice or higher) that ensures the SPI can meet its objective of informing the parliamentary debate. Such guidance would need to be developed in conjunction with the NSW Cabinet Office.

Recommendation

3

Develop comprehensive guidelines to support those developing SPIs, including updating the Template Statement of Public Interest and Example Statement of Public Interest included in the Premiers Memorandum (M2022-23)

- Publish on the Department of Premier and Cabinet website to provide clearer prompts and guidance on expectations of the information to be provided and provide a clear example of what 'good practice' looks like

Recommendation

4

Government focuses its efforts to improve the consistency and quality of SPIs as part of their commitment to high quality policymaking practices and informed political debate

Key Lesson

4

There are limitations to the wording of SPI questions that affects the usefulness of the information provided

While the questions being asked in the SPI have the right focus to support good practice policymaking there are identified gaps that, if addressed, would significantly improve the quality and usefulness of the SPI.

Key gaps identified through analysis suggest the need to refine existing questions or introduce additional questions to the SPI as follows:

Introduce a question explaining the object of the bill

Clearly articulating what the bill does in plain English (i.e. amend an Act, repeal a regulation, establish a statutory body etc.) would address the identified issue of the need question being incorrectly used to describe what the bill does rather than explaining the policy problem, challenge, or unmet need being addressed by the policy which is the purpose of this question.

Updating the consultation question

There is a need to make the consultation question wording more objective and informative to move beyond a description of the consultation that was undertaken and better articulate the impact of the consultation, i.e. how stakeholder feedback was sought and considered and whether it influenced the development of the policy or not. For example, the Australian Governments Impact Analysis process asks: Who did you consult and how did you incorporate their feedback?

Update the pathway question

There is a need to update the question to ensure information about the plan for review and evaluation of the policy is included post-implementation.

Taken together, these proposed amendments to the questions in the SPI would provide parliamentarians and the public with greater information about the policy making process than the current SPI questions enabled.

The precise wording of the questions would need to be developed in conjunction with the NSW Cabinet Office, Parliamentary Clerks and members of parliament.

Recommendation

5

Refine and update the wording of SPI questions to address identified problem areas and gaps

Key Lesson

5

There is a need to enhance the accessibility and awareness of the SPI to improve the transparency of policymaking for public audiences

A stated objective of the SPI is to demonstrate that sound policymaking processes have been followed in the development of a bill.

A key benefit of SPIs is that they provide a plain language description of the policymaking process which is highly readable for public audiences who may not have topic-specific or policymaking expertise.

However, the accessibility of SPIs for audiences external to parliament is limited. While the NSW Parliament website publishes papers and reports tabled in the Legislative Council, SPIs are difficult to locate on the NSW Parliament website and not saved as a unique document type (they are categorised under 'Other Government Paper').

The usefulness of information contained within the SPI is also limited by it being a scanned document, rather than a searchable PDF, and that it does not include live links to information and evidence referred to in the SPI which could encourage a greater level of public interaction with both the SPI document and the policy topic.

While the general public is potentially unlikely to directly access SPIs, the media is a key intermediary between parliament and the public and, if general awareness of the SPI was increased, it could become a useful resource for the media in reporting to the public the quality of legislative policymaking on specific bills.

Opportunities to enhance accessibility and public awareness of the SPI could include:

- Updating the NSW Parliament website to include SPIs as a unique document type
- The NSW Parliamentary Council's Office publishing the SPI on the legislation.nsw.gov.au website
- Engagement and training with the NSW Press Gallery on the value and purpose of the SPI
- Including the SPI in Parliamentary press releases on specific legislation

Recommendation

6

Support greater accessibility and awareness of the SPI

Summary of recommendations for improving the status, quality and usefulness of the SPI in NSW Parliament

The following recommendations are focused on improving the quality, usefulness and awareness of the SPI in the NSW Parliament to support purposeful, transparent and evidence-based policymaking practices.

Recommendations

1

The NSW Legislative Council Procedure Committee reviews the operation of the SPI in the Legislative Council on a regular basis to ensure compliance and quality, and support enhanced utilisation by members of parliament

2

The NSW Legislative Assembly adopts the SPI requirement for government bills in its standing orders

3

Develop comprehensive guidelines to support those developing SPIs, including updating the *Template Statement of Public Interest and Example Statement of Public Interest* included in the Premiers Memorandum (M2022-23)

4

The NSW Government focus its efforts to improve the consistency and quality of SPIs as part of their ongoing commitment to supporting high quality policymaking practices and informed political debate

5

Refine and update SPI questions to address identified problem areas and gaps

6

Support greater accessibility and awareness of the SPI

Conclusion

Supporting high quality and transparent policymaking is essential for enhancing public trust in government decisions. In the face of increasingly complex policy challenges, there is an even greater need for accountability mechanisms to ensure policymaking is guided by principles of good practice.

The SPI, if used correctly, is a valuable mechanism for supporting high quality, transparent and evidence-based legislative policymaking that is in the public interest.

However, there are challenges to the consistent provision of high quality SPIs that undermines the ability of the SPI to deliver on its stated objectives to resource members of the Legislative Council to support informed decision making on proposed bills and demonstrate sound policy making.

The five key lessons outlined in this report have been used to inform the development of six recommendations to improve the status, quality and usefulness of the SPI and ultimately support purposeful, transparent and evidence-based policymaking practices.

Across 2024-2025, the Susan McKinnon Foundation will advocate and work collaboratively with the NSW Parliament and NSW Public Service to implement these recommendations.

If SPIs better documented and demonstrated sound policymaking processes, and they were used to a greater extent to inform decision making, NSW could set a new standard for evidence-informed decision making in the public interest, which other Australian Parliaments could learn from.

Reference List

Australian Government 2023, [Australian Government Guide to Policy Impact Analysis](#), Department of the Prime Minister & Cabinet

Garvey, K 2022, [Evidence Based Policy Research Project: Analysis of Statements of Public Interest](#)

Government of South Australia 2022, [Better Regulation Handbook](#), Department of the Premier and Cabinet

NSW Government 2022, [M2022-03 Statements of public interest](#), Department of the Premier and Cabinet

NSW Government 2019, [Guide to Better Regulation: Policy and Guidelines Paper](#), Department of Treasury

State of Victoria 2024, [Victorian Guide to Regulation: A handbook for policy-makers in Victoria](#), Better Regulation Victoria

UK Government 2023, [Independent Review of Governance and Accountability in the Civil Services: The Rt Hon Lord Maude of Horsham](#)



Appendices


Appendix A – Quality Assessment Rubric applied through the Optimising the SPI project

Criteria	Inadequate	Adequate	Good Practice	Exemplary
Need	The SPI does not describe the problem/issue, lacks relevant context, evidence, and does not explain the necessity of action.	The SPI partially describes the problem/issue but lacks evidence or context.	The SPI describes the problem/issue and affected parties, provides relevant context, evidence and explains the necessity of action.	The SPI thoroughly describes the problem/issue and affected parties, provides comprehensive evidence and context, and convincingly explains the necessity of action.
Objectives	The SPI does not clearly articulate how the Bill serves the public interest	The SPI vaguely describes how the Bill serves the public interest.	The SPI clearly describes how the Bill serves the public interest with general examples and identifies constraints (if applicable).	The SPI thoroughly describes how the Bill serves the public interest with specific examples and identifies constraints (if applicable).
Options	The SPI fails to outline any alternative policy options or mechanisms considered. No justification provided for the legislative choice.	The SPI outlines some policy options but lacks detail or justification. Limited explanation for legislative choice.	The SPI provides an outline of policy options considered, with some justification. Offers a brief explanation for legislative choice.	The SPI provides a comprehensive outline of policy options considered with thorough justification. It clearly explains legislative choice with detailed reasoning.
Analysis	The SPI lacks analysis of any policy options, their benefits and costs, and does not compare different policy options.	The SPI provides limited analysis of policy options and their impacts, with minimal comparison between options.	The SPI presents analysis of policy options, their benefits and costs, and provides some comparison between options.	The SPI presents thorough analysis of policy options, their benefits and costs, and effectively compares options with depth and insight.
Pathway	The SPI lacks information on proposed implementation pathways, milestones, timelines, or plan for review/evaluation.	The SPI outlines a basic implementation pathway with limited detail on milestones, timelines, or review/evaluation plans.	The SPI provides a clear implementation pathway with milestones, timelines, and a plan for review/evaluation.	The SPI presents a detailed implementation pathway with clear milestones, timelines, and a robust plan for review/evaluation.
Consultation	The SPI does not detail any of the consultation processes and stakeholders involved and provides no evidence of stakeholder engagement.	The SPI partially details the consultation processes and stakeholders involved, and provides limited evidence of stakeholder engagement.	The SPI outlines the consultation processes and stakeholders involved and provides evidence of stakeholder engagement.	The SPI thoroughly details consultation processes including information about stakeholders involved, and provides detailed evidence of stakeholder engagement.

Appendix B – List of SPI quality assessment ratings

Legislation	Rating
24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023	Exemplary
Anti-Discrimination Amendment (Religious Vilification) Bill 2023	Adequate
Bail and Other Legislation Amendment (Domestic Violence) Bill 2024	Good Practice
Casino Control Amendment Bill 2023	Adequate
Climate Change (Net Zero Future) Bill 2023	Adequate
Combat Sports Amendment Bill 2024	Insufficient
Conversion Practices Ban Bill 2024	Adequate
Crimes Legislation Amendment (Assaults on Retail Workers) Bill 2023	Adequate
Defamation Amendment Bill 2023	Good Practice
Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023	Adequate
Electoral Funding Amendment Bill 2023	Insufficient
Emergency Services Levy Amendment Bill 2024	Adequate
Emergency Services Levy Insurance Monitor Bill 2024	Exemplary
Energy Legislation Amendment (Clean Energy Future) Bill 2024	Insufficient
Environmental Legislation Amendment (Hazardous Chemicals) Bill 2024	Good Practice
Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Bill 2024	Insufficient
First Home Buyer Legislation Amendment Bill 2023	Adequate
Government Sector Finance Amendment (Grants) Bill 2023	Adequate
Health Legislation Amendment (Miscellaneous) Bill 2024	Insufficient
High Risk Offenders Legislation Amendment Bill 2023	Insufficient
ICAC and LECC Legislation Amendment Bill 2023	Insufficient
Jury Amendment Bill 2024	Insufficient
Motor Dealers and Repairers Amendment Bill 2023	Adequate
National Parks and Heritage Legislation Amendment Bill 2024	Adequate
Ombudsman and Other Legislation Amendment Bill 2024	Insufficient
Paintball Amendment Bill 2023	Good Practice
Parliamentary Remuneration Amendment Bill 2023	Adequate
Prevention of Cruelty to Animals Amendment (Transparency and Fit and Proper Persons) Bill 2024	Adequate
Radiation Control Amendment Bill 2023	Good Practice
Rice Marketing Amendment Bill 2024	Good Practice
Road Transport Legislation Amendment (Automated Seatbelt Enforcement) Bill 2023	Good Practice
Strata Legislation Amendment Bill 2023	Good Practice
Sydney Olympic Park Authority Amendment (Hill Road Upgrade) Bill 2023	Adequate
Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024	Exemplary

Appendix C – Premiers Memorandum M2022-03 Statements of Public Interest and example SPI



STATUTE LAW MISCELLANEOUS PROVISIONS BILL 2022
STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The State Law Revision Program (SLR Program) is administered by the Department of Premier and Cabinet (DPC) and the Parliamentary Counsel's Office (PCO) in accordance with DPC Circular C2019-07 Statute Law Revision Program (DPC Circular).¹

The SLR Program involves the regular and ongoing review of the NSW statute book to rectify any issues that are identified and appropriate for inclusion in a SLR Program Bill.

The SLR Program typically results in a Bill being prepared each Budget and Spring sitting period of Parliament. SLR Program Bills contain only:

- minor amendments proposed by government agencies
- minor amendments by way of pure statute law revision proposed by the Parliamentary Counsel
- repeats of obsolete or unnecessary Acts (subject to any remaining operative provisions being transferred to other appropriate Acts), proposed by government agencies or the Parliamentary Counsel
- savings and transitional provisions.

Amendments proposed by agencies must be approved by the relevant Minister, must be non-controversial and contain no more than minor policy changes.

Matters that are usually inappropriate for inclusion in the SLR Program include but are not limited to:

- amendments increasing sentences of imprisonment for offences, or creating offences punishable by imprisonment
- amendments increasing monetary penalties by very high amounts
- amendments that prejudice the private rights of any person
- amendments retrospectively imposing liabilities on any person
- amendments to Acts dealing with controversial subject matter
- amendments that have been the subject of disputes between agencies, or that require considerable whole of government consideration
- lengthy or voluminous amendments.

SLR Program Bills are comprised of legislative amendments that would not otherwise be significant enough to warrant separate amending legislation.

SLR Program Bills ensure that the NSW statute book remains current and accurate. The use of periodic SLR Program Bills allows for proposals from across all Ministerial portfolios to be

¹ See, <https://arp.nsw.gov.au/c2019-07-statute-law-revision-program/>

1

consolidated into a single omnibus Bill. This is the most effective and efficient way for the NSW Parliament to consider such amendments.

Objectives: What is the policy's objective couched in terms of the public interest?

The SLR Program and the resulting Bills ensure that the NSW statute book remains accurate and current.

There is a strong public interest in ensuring the accuracy, coherence and quality of NSW legislation.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Statute law revision can only be achieved through legislative amendment.

If consolidated omnibus SLR Program Bills were not brought forward by the Government regularly, the alternative options would be for the Parliament to consider a high number of separate amendment Bills, or to not make legislative amendments to correct identified issues.

Analysis: What were the pros/cons and benefits/costs of each option considered?

If the amendments were not made, this would result in issues addressed by statute law revision – such as the correction of any typographical issues or redundant or obsolete references – to remain unaddressed.

If the SLR Program Bills were not used to deal with these amendments, it is likely that the Parliament would otherwise have to dedicate significant time and resources to considering a high number of separate amending Bills.

The use of SLR Program Bills is considered the most effective and efficient way for the NSW Parliament to consider such amendments.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The SLR Program is administered by DPC and the PCO in accordance with the DPC Circular.

The internal timetables for Ministers and agencies to put forward proposals for inclusion in a SLR Program Bill are set out in the DPC Circular.

Ministers and agencies instruct the PCO on the commencement of each separate proposal. SLR Program Bills typically commence on assent. Once the relevant provisions of the Bill commence, the amendments to the target legislation take effect.

Ministers responsible for administering the legislation being amended, and the agencies who support those Ministers, advise stakeholders of the minor amendments where relevant.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Relevant Ministers and agencies are responsible for consulting with any relevant stakeholders before a proposal is put forward for inclusion in the SLR program. Proposals are only included in a SLR Program Bill if they are non-controversial and contain no more than minor changes.

2

Appendix D – Statement of Public Interest Example Guidance Material

Criteria Guidance

KEY:

Yellow = existing prompts available in the Template SPI included in M2022-03 Statements of public interest

1. Need: Why is the policy needed based on factual evidence and stakeholder input?

[Insert content explaining the evidence base for the Bill.]

This section is intended to explain the evidence base for the Bill. This section should clearly outline the problem, challenges, or unmet need being addressed by the policy, as well as any relevant background information.

To meet the criteria for this question, it is not necessary to explain the reason for addressing the problem couched in terms of the public interest, as that is dealt with in question two. Nor is it necessary to explain the depth of stakeholder consultation, as this is addressed in question six. The reference to stakeholder feedback in this section is relevant only for providing an evidence base for the Bill. The results of data analysis undertaken by government departments, or the findings of a parliamentary committee may be sufficient for this section.

A high-quality answer to this question will describe the problem and which sections of the community the problem affects. It will also provide evidence that supports the government's argument that the problem exists, and that action is required.

- The SPI includes a description of the problem/issue this Bill seeks to address. It outlines the relevant context for the Bill, describes the parties affected by the identified issue, includes information about previous or current government measures that sought to address that problem (if applicable), and explains why some action is necessary.
- The SPI includes quantitative and/or qualitative evidence concerning the existence of the problem, including but not limited to data, stakeholder feedback, and internal/external research reports/inquiries that support the argument for action to be taken.
- If this is an election commitment or is a follow-on from a policy announcement, the SPI makes explicit mention of this and notes when it was first announced.

2. Objectives: What is the policy's objective couched in terms of the public interest?

[Insert content explaining the way in which the Bill serves the public interest.]

Policy serves the public interest when there is direct benefit to the public resulting from a change of policy. It is not in the public interest if it solely services individual or vested interests. The policy must address matters of common concern or relevance to all members of the public, or a large proportion of the public, or a specific cohort identified as in need of targeted policy change. There may be conflicting interests, but the policy would be in the public interest if the public value of action, on balance, outweighs the value of doing nothing.

Specific examples of how a policy may benefit the public may be shown by pointing to how the policy benefits matters including education quality, public health, economic sustainability, environmental sustainability, social cohesion, social inclusion, public safety, trust in government, access to essential services, democracy, transport accessibility, personal liberties and freedoms, workforce development, income equality, rural development, etc.

- The SPI describes how the Bill serves the public interest with specific examples. (Merely stating that the Bill is in the public interest would not be sufficient.)
- The SPI describes how the intended public interest outcome/s of the Bill are relevant to the need for the Bill (the need for an action).
- The SPI describes any constraints on delivering the public interest outcome. (i.e. parliament's power to legislate).

3. Options: What alternative policies and mechanisms were considered in advance of the Bill?

[Insert content describing any alternative policies or options considered before the drafting of a Bill.]

This section should outline any non-legislative or non-regulatory policy options and mechanisms that were considered to address the problem, need, and objective as outlined in previous sections. If legislation was the only mechanism considered, it should be explained why. Many SPIs include language such as ‘the reforms can only be achieved through legislative amendment’. This would not be sufficient as legislative amendment is the machinery to give effect to a policy option, not the option itself.

- The SPI outlines any policy options and/or mechanisms that were considered to address the problem, need, and objective as outlined in previous sections (legislative / non/legislative options). If legislation was the only mechanism considered and no non-legislative options were considered, the SPI explains why.

4. Analysis: What were the pros/cons and benefits/costs of each option considered?

[Insert content describing – in further detail – the relative benefits and detriments of each of the options identified. This should describe why the drafting of the Bill was the preferred option.]

- The SPI presents an analysis of each of the options outlined in the previous section, and considers their benefits and costs, and arguments in favour and against. The analysis should describe the economic, social, environmental, and fiscal costs and benefits, supported by qualitative and quantitative evidence (where applicable) and should conclude by explaining why this Bill was the chosen path to solve the identified problem.
- The SPI considered the merits and demerits of no policy change (i.e. maintaining the status quo), and clearly demonstrates why some action is in the public interest as opposed to no action.
- The SPI outlined what potential risks were identified and how they were mitigated OR why policy makers deem them as acceptable risks in the circumstances.

5. Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

[Insert content describing the practical steps following passage of the Bill through the Parliament to implement the policy given effect by the Bill.]

- The SPI provides a brief overview of the proposed implementation pathway, implementation milestones and timelines, and a plan for review and evaluation.
- The SPI outlines the accountability and responsibility lines for the legislative and policy mechanisms, including any relevant governance and reporting arrangements, necessary transitional arrangements and additional resourcing required or steps that need to be taken, and the timeframe required to support this.

6. Consultation: Were the views of affected stakeholders sought and considered in making the policy?

[Insert content describing the consultation that occurred prior to or following the introduction of the Bill]

- The SPI details the relevant steps taken in the consultation process, for example the range of stakeholders consulted, how and when they were consulted, and the impact or influence this outreach has on the Bill. If no consultation has been undertaken, or only internal (department and agency) feedback has been considered, then the SPI explains why this was appropriate in the circumstances.
- The SPI outlines key stakeholders and the interest groups these stakeholders represent. Where the Bill affects key stakeholders who may have conflicting opinions, it shows evidence that both sides have been given an opportunity to be consulted or provide feedback.

Appendix E – Work Health and Safety Amendment – Statement of Public Interest

Tabled, by leave,
by Mr Stange
Jacqueline
for Clerk of the Parliaments
19 / 6 / 24

Statement Of Public Interest

Need: Why is the policy needed based on factual evidence and stakeholder input?

The *Work Health and Safety Act 2011* (the Act) aims to secure the health and safety of workers and workplaces through the elimination or minimisation of risks, to provide workers and others with the highest level of protection from hazards and risks, so far as is reasonably practicable.

As part of the NSW Government's commitment, announced on October 2023, the *Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024* (the Bill) introduces an industrial manslaughter (IM) offence for NSW, and makes a minor consequential amendment to the *Industrial Relations Amendment Act 2023*. The Bill also implements an amendment to the model WHS legislation within the NSW WHS Act.

On 28 February 2023, the Work Health and Safety (WHS) Ministers nationally agreed to amend the model WHS laws to include a jurisdictional note and model penalty amounts for the offence of IM. The jurisdictional note allows states and territories to create or retain an existing offence for IM without it being viewed as a departure from the model laws.

Seven Australian jurisdictions (WA, NT, ACT, VIC, QLD, SA and the Commonwealth) have already introduced an IM offence within their own WHS laws.

The *Review of the model WHS Laws 2018* (the Review), published February 2019 by Safe Work Australia (SWA) recommended (recommendation 23b) amending the model WHS Act to provide for a new offence of industrial manslaughter, and that the offence should provide for gross negligence causing death. As a part of the Review, an extensive, national consultation process was undertaken.

The consultation identified that there is an increasing community expectation for there to be an industrial manslaughter offence in the model WHS laws. This expectation was based on the perceived deterrence effect of an industrial manslaughter provision and the desire for duty holders to be subject to serious penalties including imprisonment where there is a workplace death.

Further, the Review considered an industrial manslaughter offence is required as there are limitations to prosecuting workplace fatalities under the model WHS laws, and the general criminal manslaughter laws in each jurisdiction. The Review also considered that it would be preferable for the model WHS laws to include an industrial manslaughter offence to promote harmonisation.

Notably, inclusion of IM was also raised in Recommendation 13 of the 2018 Senate Inquiry Report, *They never came home – the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, published October 2018. The Senate Inquiry also undertook significant consultation as a part of the inquiry process.

Public consultation was also held with specific reference to the design of an IM offence within the context of NSW's WHS Act. Many of the issues identified within the Review and Senate Inquiry were reflected in the feedback provided.

In October 2023, amendments were introduced to align NSW WHS legislation with the model WHS laws, implementing remaining recommendations from the Review.

In November 2023, Safe Work Australia (SWA) published an additional amendment to the model WHS Act to clarify how gross negligence may be attributed to a body corporate. The amendment allows for the aggregation of conduct of more than one authorised person. The Bill amends section 244B of the Act to reflect these model amendments. As model amendments, these have been subject to tripartite consultation and consideration.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill seeks to amend the Act to establish an IM offence to strengthen existing laws and act as a deterrent to those persons conducting a business or undertaking (PCBU) and their officers from breaching their work health and safety duties.

It will ensure those found guilty of breaching their duties and engaging in grossly negligent conduct resulting in a death are held accountable and appropriately penalised for their conduct - providing justice for the families, friends and colleagues of those who lost loved ones at work.

Further, the Bill will also provide greater consistency amongst jurisdictions in the approach taken to industrial manslaughter and bring NSW into greater alignment with the nationally harmonised WHS laws.

Since July 2008, NSW has been a signatory to the nationally harmonised Work Health and Safety (WHS) framework, as committed under the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (the IGA). All Australian jurisdictions, except for Victoria, have adopted the model WHS laws.

The amendments to section 244B and 244BA within the Bill are based on model amendments, which have been approved by WHS Ministers and are now part the national model WHS laws as of November 2023.

Harmonisation of WHS legislation has had great benefits for businesses and workers in this State. Continuing to ensure that NSW WHS legislation is aligned with the model WHS laws is in the public interest.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Review identified limitations of criminal law when dealing with breaches of WHS duties.

Whilst in certain circumstances workplace deaths in NSW may be prosecuted as an offence of manslaughter under the Crimes Act 1900, the prosecution of large corporations for this form of manslaughter can be difficult. This is because it requires evidence of criminal negligence on the part of a particular individual who can be identified as the directing mind

and will of the company. This can be hard to establish particularly for large businesses where there are large numbers of staff with multiple layers of responsibility.

Under the highest tier offence under the WHS Act, Category 1 Offence, an injury or death does not need to occur before a duty holder can be prosecuted – instead the offence arises when a duty holder exposes the individuals to whom the duty is owed to the risk of death or serious injury.

The Bill addresses the need for an appropriate and targeted manslaughter offence, to deal with work related fatalities involving gross negligence, within the framework of the *Work Health and Safety Act 2011*.

The additional amendment to Section 244B of the Act is a model amendment and provides legislative clarity on the application of gross negligence within the context of offences outlined within the Act. There is no suitable alternate mechanism to provide this clarity.

Analysis: What were the pros/cons and benefits/costs of each option considered?

As stated above, this proposal fills a regulatory need and provides a targeted manslaughter offence, to deal with work related fatalities involving gross negligence, within the framework of the *Work Health and Safety Act 2011*.

Noting the recommendations from the Senate Inquiry and the Review, alternate regulatory options have not been considered as best practice and appropriate for implementation. An IM offence will address barriers to prosecution under general manslaughter laws and existing WHS regulatory framework (particularly corporate bodies).

Inclusion of IM will provide a deterrent to unsafe work practices, alleviate community concerns, appropriately punish those who breach their WHS duties in the most serious of instances, and strengthen harmonisation of NSW with model WHS laws and the seven other jurisdictions that have already implemented an IM offence in their own WHS laws. Harmonisation can benefit regional and rural communities from additional consistency in the WHS laws, enabling them to comply with those laws more efficiently and effectively.

The introduction of an IM offence will not increase regulatory burden as it does not impose additional WHS duties on a business.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Schedules 1 [5], [6], [7], [8] and 2 will commence on the date of assent. These are the provisions related to:

- Model WHS amendments to Sections 244B and 244BA with regard to gross negligence,
- Section 276B with regard to the statutory review of the industrial manslaughter provisions, and
- Consequential amendments to the Industrial Relations Amendment Act 2023, which commences on 1 July 2024.

All remaining provisions related to the new offence of industrial manslaughter will commence on proclamation. This is to ensure that all procedures and processes are able to be thoroughly considered, and well established, prior to the commencement of the offence.

It will allow for all affected Government agencies, including those who are responsible for the prosecution of industrial manslaughter offences to consult and engage with each other to ensure the optimal outcomes. The impacted agencies include SafeWork NSW, NSW Resources Regulator, Department of Justice & Communities and the Office of Director of Public Prosecutions. All affected agencies will work collaboratively to ensure the effective rollout of this legislative amendment.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Stakeholder views were essential to the formation of the Review's recommendations and implementation and design of the Bill.

A public consultation on a proposed structure of an industrial manslaughter provision was conducted over a four-week period from 19 February to 18 March 2024. A consultation paper was published on the NSW Governments Have Your Say Website, along with a survey. There were 46 written submissions and 420 survey responses received.

Responses and written submissions were received from a wide variety of stakeholders including unions, industry associations, the public, PCBUs, government agencies, legal practitioners and family members of injured or deceased workers. Submissions were also received from workers from a variety of industries such as construction, mining, health and education.

Several consultative roundtables were also held with stakeholders. These sessions involved Unions, Industry and Legal representatives. Since this time, the Minister's Office together with the Attorney General's Office has been involved in extensive consultation concerning the draft bill with Union, Industry and Legal Stakeholders.

The NSW Resources Regulator (co-WHS Regulator in NSW), the Department of Communities and Justice, the Ministry of Health and Transport for NSW were consulted on the parameters of the Bill. The Office of the Department of Public Prosecutions has also been consulted as the Bill has been developed.

Consultation on the model amendments for section 244B occurred as part of the national process, which follows the tripartite model of policy development.



Level 11, 90 Collins Street
Melbourne, VIC 3000 Australia
info@susanmckinnon.org.au

susanmckinnon.org.au