

# Government policy-making

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The processes underpinning the conceptualisation, design and implementation of public policy can either serve democratic values, or they can embody democratic deficits. A good policy process asks whether appropriate authorisation exists for a proposed policy; asks what the policy is intended to achieve; questions the assumptions underpinning the proposal; stress-tests the feasibility of implementation; considers the strengths and weaknesses of alternative options; and asks whether a 'licence' exists to enact the policy.

## **What criteria for a democratic policy process should government and public sector bodies meet in a liberal democracy?**

- ◆ Is there an electoral mandate for the policy? Do policy proposals logically flow from the platform set out by the governing party in an election campaign? Or, in the absence of an electoral mandate, has the government made the case for policy responses to problems that emerge under circumstances where it is not possible for government to seek approval from the electorate?
- ◆ Is the policy consistent with an election promise and/or party values and priorities? In general, the electorate expects governments to keep their promises. And, in general, governments intend to keep their promises, although circumstances (such as the make-up of the parliament, and their consequent ability to pass legislation) might curtail their aspirations.
- ◆ Whose interests are served by the policy? It might be popularly supposed that policy settings are responsive to, and guided by, the preferences of electors as interpreted and mediated by political actors. It is more realistic, however, to suppose that voter preferences are of lesser importance than those of 'interests' with the influence and means to donate money (and to openly back) political parties.
- ◆ Has the need for the policy been established? In an ideal world, policy is proposed to address problems about which there is a shared concern and understanding. Some policy proposals, however, might best be described as 'solutions looking for problems'.

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- ◆ Is there a legal basis for the policy? Public policy derives legal authority from the Constitution, supporting legislation and delegated (or subordinate) legislation. A fundamental democratic obligation of government is to ensure – and provide assurance – that public policy is ‘legal’.
- ◆ Is the policy process transparent and accountable? Not infrequently the implementation of public policy occurs in ways that deviate from the normative expectations of good public administration. This might include deficiencies in transparency, accountability, governance and process.
- ◆ Does the policy require a social licence and does a social licence exist? Social Licence to Operate (SLO) is fundamentally concerned with issues of transparency, accountability, legitimacy and, most importantly, trust, particularly in circumstances in which stakeholder communities have not, historically, enjoyed input into, or influence on, decisions that affect their lives – especially decisions made by big business and/or by government.

## Recent developments

Over the past two decades Australian governments – federal, state and territory – committed to policy-making frameworks that were citizen-centred and evidence-based. Lip service was also given to policy-making that offered voice and agency to those affected by policy and encouraged collaboration across organisational, domain and sector boundaries. While there was scant evidence of success against these aspirations, evidence of practice that fell short of government aspirations was abundant. Path dependence, organisational and programmatic silos, the influence of powerful interests, and political expediency all acted to preserve the status quo and allowed democratic deficits to persist.

This chapter begins with a SWOT (strengths, weaknesses, opportunities and threats) analysis that gives a granulated answer to the criteria questions posed above. After the SWOT analysis, three sections consider: how policy happens; democracy, policy and civic engagement; and the fit between each of the audit criteria above (in that order) and the modern policy process.

# Strengths, weaknesses, opportunities and threats (SWOT) analysis

Current strengths	Current weaknesses
<p>Opportunities have long existed for ordinary members of Australian political parties<sup>1</sup> to influence policy priorities and election platforms. This can occur at the party branch level and cascade upwards to party conferences where members may be able to formally ratify or amend party positions on a range of matters (see <a href="#">Chapter 6</a>).</p>	<p>The rules governing member input into policy priorities vary between the major parties. The two biggest parties, Labor and Liberal, have seen their member base decline over the years and, in reality, party decisions tend to be influenced by factional blocks, often with institutional backing (for example, trade unions or business lobbies). This means that many policy domains are susceptible to ‘capture’ by sectional interests.</p>
<p>In the absence of consistent, formalised and institutionally sanctioned avenues for voter input into policy priorities, formulation or design, the Australian media has long played an important role in facilitating disclosure and providing forums within which the political and practical merits of government policy can be debated (<a href="#">Chapter 8</a>).</p>	<p>The continuing decline of traditional news media in the face of digital transformation poses challenges for in-depth investigative reporting and analysis, meaning that the existence of an informed policy-literate public cannot be taken for granted (see <a href="#">Chapter 8</a>). Moreover, the influx of diverse non-traditional media means that the provenance and reliability of reporting is unreliable, and often takes the form of echo-chambers that might reinforce and amplify uninformed opinion (see <a href="#">Chapter 9</a>).</p>
<p>Non-aligned social movements have emerged as a counter to the transformation of the major political parties from social and political movements into political ‘machines’. As the influence of ordinary party members has reduced, and the power of career party officials has increased, emerging social movement organisations have been able to take advantage of new forms of digital outreach to curate alternative spaces in which policy discourse can occur (see <a href="#">Chapter 7</a>).</p>	<p>The new digital media is an unruly space occupied by a bewildering array of voices that reflect a broad spectrum of political opinion. These digital spaces are frequently characterised by hyper-partisanship and polarised viewpoints, so policy-makers face major challenges when attempting to engage with such diverse audiences (<a href="#">Chapter 9</a>). As a result, policy-makers sometimes find themselves reacting to developments on social media platforms, such as Facebook and X (formerly Twitter), whose capacity to accurately represent public sentiment is difficult to gauge.</p>

<p>Civil society is an important institutional pillar of Australian democracy. Civil society organisations have long sought to represent the voice of marginalised communities through policy advocacy. Australia's is not a polity in which ordinary citizens' and voters' engagement with public policy ends at the ballot box (Chapter 7). Civil society organisations often act as trusted intermediaries between communities of interest and the government and public service.</p>	<p>Civil society is sometimes regarded by government as an irritant, or as an impediment to policy implementation. Civil society organisations (not-for-profits) engaged in contracted service delivery are sometimes discouraged from engaging in policy advocacy or commentary. Also, because civil society comprises a broad spectrum of organisations and viewpoints, it is sometimes possible for government to privilege the voice of organisations whose positions align with their preferred policy, over those that are critical of government.</p>
<p>The past two decades have seen the emergence of important discourses in the fields of public administration and governance. Academically driven for the most part, these conversations have also been taken up by executive government. Today the underpinning concepts of multi-party collaboration, deliberative democracy, network governance, co-production and co-design, evidence-based policy, and citizen-centred policy are well understood and have become embedded in policy parlance.</p>	<p>Unfortunately, theoretical and conceptual understandings have not translated well into practice. The problem of achieving more inclusive policy styles lies with factors such as path dependence, institutional rigidity, risk aversion, organisational and programmatic silos, and systems of public sector governance that reinforce fidelity to the government's agenda, even at the cost of sound policy or the public good.</p>
<p>Dedicated and independent anti-corruption agencies exist in most Australian states, and their investigatory powers help curb malfeasance in public office. On occasion they may probe the behavior of even the most senior politicians.</p>	<p>Until recently Australia has lacked a federal anti-corruption body. At the 2022 federal election, Labor pledged to establish 'a powerful, transparent and independent National Anti-Corruption Commission' (Gallagher, 2022 and 2023; Halligan, 2024). After the election, ministers subsequently pushed the proposal through parliament, proclaiming it 'the single biggest integrity reform this parliament has seen in decades'. An effective anti-corruption body would help to reduce the influence on the federal policy process of powerful interests and reinforce the primacy of the public good in policy-making.</p>
<p>Australia's Freedom of Information regime is similar to those of other G7 liberal democratic countries and allows considerable media and citizen access to non-confidential government information.</p>	<p>Ministers and officials often use the shield of 'privacy' or commercial confidentiality to avoid providing information. Australian governments have also used draconian security legislation to pursue whistle-blowers and to silence critics, including journalists, suggesting a worrying anti-democratic impulse. In addition, lobbyists and powerful interests are sometimes able to leverage undue influence on the policy process in ways that are arguably contrary to the public interest. Unchecked, this poses a threat to democratic purpose.</p>

Future opportunities	Future threats
<p>Digital platforms, including social media, provide new opportunities for engagement (see <a href="#">Chapter 9</a>). Policy-makers can curate virtual spaces in which stakeholders can join discussions about policy priorities, options and preferences, thereby democratising the policy process. The COVID-19 pandemic, for example, helped to demonstrate the convening power and reach of digital platforms.</p>	<p>Policy-makers will need to be astute in their attempts to leverage the convening power of digital platforms. The digital world is fragmented, and likely to fragment even further, accentuating the challenges of curating spaces in which diverse voices can be heard. The democratic potential of digital convening cannot be fully realised without systemic and institutional change in other aspects of the polity.</p>
<p>Policy-makers can already take advantage of unprecedented flows of data to devise policy options that are localised (or even personalised), responsive and adaptive. When coupled with the right analysis and engagement strategies, policies driven by ‘big data’ potentially allow government impacts on stakeholders’ lives to be anticipated and fine-tuned to minimise harms and maximise benefits. Increasing access to real-time data has greatly extended the scope of economic, social and scientific policy interventions, as in the COVID-19 pandemic.</p>	<p>Big-data flows and real-time data have also enabled extensive covert surveillance of the population by security and other state agencies. Critics argue that the potential to misuse these technologies in ways inimical to democratic purposes cannot be under-estimated and has been only weakly controlled.</p>
<p>A growing body of research and practice on participatory approaches to policy-making focuses on the application of systems thinking in a design-led approach (<a href="#">Blomkamp, 2021</a>). These citizen-centred approaches are participatory in nature and utilise collaboration and co-design principles to improve public policy (see <a href="#">Chapter 14</a>).</p>	<p>Participatory approaches to policy design have been debated for over a decade. Although the use of systems-thinking and design-led approaches has been trialled in some locations, and has shown promise in addressing complex societal problems ‘in place’, the methods required are difficult to embed in ‘hierarchical and bureaucratic’ public sector organisations where the requisite skills are often in ‘short supply’ (<a href="#">Blomkamp, 2021</a>, p.17). Moreover, our systems and practices of policy governance – including ministerial oversight – and a tendency to emphasise control over accountability and transparency, might militate against their widespread adoption. Brenton Holmes observed: ‘The APS [Australian Public Service] will take its cue from government, and the challenges of its becoming truly collaborative and citizen-centric will be augmented or diminished in line with ministers’ willingness or reluctance to allow genuine devolution of decision-making to frontline professionals and the citizens with whom they engage’ (<a href="#">Holmes, 2011</a>).</p>

# How does policy happen?

In order to reflect on the nexus between democracy and public policy, it is important to contemplate the nature of public policy and the policy process, given that:

*[P]olicy affects our birth, the manner in which we are raised and educated, our access to health care, the quality of our physical environment, how we conduct ourselves, whom we might marry, our access to employment, our rights at work, our access to housing, how we raise our children and even the quality of our deaths and what we are able to pass on to the generations succeeding us ... Policy provides a framework for what can and ought to occur in prescribed situations. However, policy is also malleable and is subject to interpretation and adjustment as circumstances change. Changing expectations, attitudes, beliefs, values and behaviours often lead, eventually, to changes in government policy.*  
**(Butcher and Mercer, 2024)**

Governments and decision-makers take their policy cues from various quarters: from key institutions (including religious institutions and the press); 'interests' (including industry sectors, professional associations, lobby groups and lobbyists); experts (think-tanks, academics); and from the public (often as mediated by the press and political actors). Encouragingly, Carson, Ratcliff and Dufresne (2018, p.17) conclude that 'Australian MPs, notwithstanding strong party discipline, seek to respond to constituent preferences.' However, they do so 'imperfectly, and with caveats', noting that 'under certain circumstances parties ignore public opinion on matters that are important to party goals' (Carson, Ratcliff and Dufresne, 2018, p.16) – like winning elections.

There are many highly contested issues where one might expect to observe a lack of congruence between public opinion and policy responsiveness such as voluntary assisted dying, or the decriminalisation of cannabis. Whether or not legislators take heed of public opinion on these matters might depend on whether the public considers them to be important or not (relative to other policy areas, such as the economy, jobs or education). If parties calculate that the electoral cost of supporting a particular policy option exceeds the cost of rejecting change, then the status quo will likely prevail.

## Democracy, policy and civic engagement

We might say that democracy is best served when the public – including those who vote and those who do not – are engaged, civically aware and informed. Indeed, the official view (as expressed by the Australian Bureau of Statistics (ABS)) is that when citizens participate in civil society their concerns, needs and values can be incorporated into government decision-making and, thereby, 'arrive at better collective decisions that are supported by the population' (ABS, 2010).

Yet, in 2006, the ABS found that the rate of participation in one or more civic or political groups was only 19 per cent of all persons aged 18 years and over:

*This level of involvement varied with age. It was 23 per cent for those aged 45 to 64 years, with lower levels of involvement from younger and older persons. The civic or political groups that people were most likely to be active in were*

*trade union, professional and technical associations (7 per cent), environmental or animal welfare groups (5 per cent), followed by body corporate or tenants' associations (4 per cent).* (ABS, 2007)

Scroll forward 15 years and the situation had not much improved. The ABS (2020) found only 14 per cent of employees (1.4 million) were trade union members, down from 40 per cent in 1992 (see Chapter 7 for a fuller analysis). Similarly, membership in the major political parties had plunged since the 1960s, accompanied in recent years by an upsurge of engagement in social movements such as GetUp and interest in independents and minor parties (Davies, 2020). The reason would appear to be, in part, that for people to be engaged, and stay engaged, they need some assurance that they can influence outcomes and that their engagement 'matters'.

In a 2021 parliamentary report, former Labor Senator Kim Carr observed that 'the level of civic engagement and debate in this country is disturbingly low' (Legal and Constitutional Affairs References Committee, 2021a). Even the dissenting report issued by Liberal senators lent support to the proposition that despite voters' enduring belief in democracy, 'a lack of knowledge among Australians of Australia's democratic history, and the significance and rarity of our institutions' leave many people (especially the young) 'ill equipped to engage as civic citizens' (Legal and Constitutional Affairs References Committee, 2021b).

## Audit criteria for a democratic policy process

The remainder of the chapter focuses on the audit criteria for a democratic policy process set out at the start of the chapter.

### **Is the policy consistent with an election promise or mandate or with political values?**

Policy platforms at elections are usually expressed as broad expressions of intent. They rarely go much beyond generalities, and while they might foreshadow specific measures to give effect to policy intent, the detail of those measures and their implementation is often not revealed until after an election. In general, voters expect governments to implement the policies set out as part of a party election platform or, at the very least, policies consistent with the parties' values and philosophy. Similarly, voters might reasonably expect the opposition, crossbench parties and independents to advocate for alternative policy options; seek to represent the views and concerns of the broader community; and hold governments to account.

Policy consistency is a virtue in a representative democracy and governments have often felt the wrath of voters when they have failed to keep their promises or have acted in a manner inconsistent with their undertakings (Sydney Morning Herald, 2004). Electors sometimes take a dim view of governments introducing policies for which they have not previously obtained a mandate from voters and might be inclined to punish ministers who fail to implement policies for which an electoral mandate had been given. Two examples from the Howard Coalition and Rudd Labor governments come to mind.

In the lead-up to the 1996 election, John Howard invented a category of 'core' promises, which would be kept, leaving the public to infer that everything else was 'non-core' (Quiggin, 2013).

Although this distinction created a political space in which a failure to keep non-core promises might be justified, it did not give the government licence to implement policies for which it did not have a political mandate.

Kevin Rudd's first Labor government suffered a major loss of political capital in 2009 when it walked away from an emissions trading scheme after Rudd himself had declared climate change to be the greatest moral, economic and social challenge of our time (Chubb, 2014). It did not matter to the public that the composition of the parliament at the time was not conducive to legislating such a policy: the fact that the government walked back on a signature policy seriously undermined the standing of the Prime Minister (PM) and his government and led, ultimately, to Rudd's replacement by his deputy, Julia Gillard. Conversely, the Gillard Labor government experienced enormous backlash when it implemented a carbon pricing mechanism after the PM had announced prior to the federal election that, 'there will be no carbon tax under the government I lead' (Marks, 2013).

When Malcolm Turnbull replaced Tony Abbott as PM in a leadership ballot on 14 September 2015, he said he had no plan to change the government's policies, but he would do so 'if they don't work as well as we think, or we think others can work better'. A few days later he added: 'When governments change policies, it's often seen as a backflip, or a backtrack, or an admission of error. That is rubbish. We've got to be agile all the time' (2015 statement, archived at ABC, 2024a). During the 2022 federal election campaign, Labor Opposition Leader Anthony Albanese promised to fully implement tax cuts legislated in 2019 by the Morrison Coalition government (Remeikis, 2022). According to diverse commentators, these cuts would disproportionately benefit persons on higher incomes at an enormous cost to the Treasury. On numerous occasions, however, PM Albanese reiterated Labor's intention to keep that promise, despite unease within the party and on the crossbenches. But in January 2024, the government, citing advice from Treasury officials, announced that it was obliged by current economic circumstances to revise its position to offer tax relief instead to people on low and medium incomes. Although the opposition parties decried the 'broken promise' and labelled the PM and the Liberal-National government as untrustworthy (ABC News, 2024b), the Coalition later voted for the proposed change in February 2024. For its part, the government seems to have hoped that offering tax relief to millions more citizens would negate voter unease about a broken promise (Probyn, 2024).

Policy reversals – or 'back-flips', as they are charmingly called in Australia – are seen by some observers as the 'irritating accoutrements of contemporary politics' (van Onselen and Errington, 2007). Politicians need to be alive to the electoral consequences of such irritations. In general, governments intend to keep their promises, although circumstances might curtail their aspirations. Governments will be criticised by the opposition, the crossbench, interest groups and the media for any failure to give effect to their election commitments, regardless of the reasons. They will also be criticised for persevering with policy promises in the face of evidence that the policy is ill-founded – climate change policy offers examples of both tendencies.

## Policy over-reach?

Governments might occasionally be called upon to design and implement policies for which no electoral mandate has been sought or secured, notable examples being the Howard Coalition government's gun buy-back scheme formulated in response to the 1996 Port Arthur massacre; the Rudd Labor government's economic stimulus package, which sought to cushion the

Australian economy from the worst effects of the 2007 to 2009 Global Financial Crisis (GFC); and the Commonwealth, state and territory governments' (quite bipartisan) responses to the global COVID-19 pandemic (Quiggins, 2020).

Where policy responses are made to existential threats to the community, governments will seek retrospective authorisation by voters when they eventually go to the polls. If the public perception of threat is still on-going then governments might be rewarded for their actions. For example, state elections held at the height of the COVID-19 pandemic saw incumbent governments returned with increased majorities in Western Australia and Victoria – jurisdictions with the toughest COVID-19 regimes in the country (see Chapters 18 and 21). However, if government action results in a threat being averted – as might be argued in the case of the Rudd government's fiscal stimulus package of 2008/09 – voters may not perceive a direct link between the action taken and the risk avoided, and political 'rewards' for those actions might be denied. Conversely, where public perception of an existential threat is on-going – as was the case of the global pandemic – governments might reap political dividends even when their policy actions represent a sharp pivot away from the platform upon which they were elected. This was the case for the Morrison Coalition government, which was obliged to massively increase spending (and incur debt) to sustain the economy through the worst of the pandemic despite setting the achievement of budget surpluses as a core priority in pre-pandemic times (Kenny, 2020).

Voters understand that circumstances may arise between elections that demand an urgent policy response where governments are unable to seek electoral approval. Indeed, the public expects government to respond to emerging challenges and to govern in the public interest. But that does not mean that governments have a *carte blanche* to indulge in policy adventurism, and voters have a limited tolerance for government overreach. For instance, consider the Howard Liberal-National Coalition government's *Workplace Relations Amendment (Work Choices) Act* 2005; it entailed significant changes to Australia's workplace relations system that ministers said would make it more flexible, simple and fair (Parliament of Australia, 2005; Wikipedia, 2024; see also Chapter 12). The Coalition had long sought to re-regulate workplace relations, and from the 2004 election Howard's government enjoyed a majority in both the House of Representatives and the Senate – a rarely granted mandate in Australia. Despite this, the policy met with strong opposition from trade unions and the public and had mixed support from factions within the government itself, and several states raised High Court challenges to the new legislation (Centre for Public Impact, 2017). Work Choices was widely seen as a case of radical reform that exceeded public expectations and the coordinated campaign against the policy was a factor in the government's defeat at the 2007 election (Woodward, 2010).

## Of grand visions and small targets

If policy consistency can sometimes be construed as a virtue, 'visionary' or reformist policy can become a 'pariah', according to Errington and van Onselen (2021). They examined cycles of policy daring and timidity in Australian politics, noting that reformist policy propositions can easily be demonised, especially during election campaigns. This is the work of many hands: a hyper-partisan media focused on headlines and lacking the will or capacity for cogent analysis; an uninterested and unengaged electorate; and a combative political arena in which political actors are more interested in published political polls than they are in engaging in rational discourse about policy futures. The authors conclude that: 'We shouldn't expect political leaders

to show courage – to use a term currently in fashion – when the electorate and the media reward a more conservative approach’ (Errington and van Onselen, 2021, p.2).

It is particularly difficult for opposition parties to bring bold policy to the table because they lack the resources of government to comprehensively test and present their ideas. Political commentators often harken back to 1993 when Liberal Opposition leader John Hewson went into a federal election with a complex and ambitious policy agenda called ‘Fightback’ that became the subject of a massive scare campaign mounted by Labor. An election that some considered ‘unlosable’ by the opposition instead saw the return of the Keating Labor government. Fast forward to 2019 when Labor Opposition leader Bill Shorten took a far more modest set of tax reform proposals to an election; they were also subject to a ‘scare campaign’ that contributed to the unexpected return of incumbent PM Scott Morrison (SBS News, 2019).

A retrospective analysis of missed opportunities for ‘worthwhile’ policy reform published by The Grattan Institute (Daley, 2021) suggested that Australia’s governance had weakened since the 1990s, resulting in a ‘gridlock’ of policy reform. Many factors were implicated in this decline, including changes in our media landscape; a weakened and pliant public service; the influence of unaccountable ministerial advisers; opaque decision-making; complex processes for appointing and dismissing senior public servants; ministerial influence over government contracts and grants; political patronage; and the corrosive effects of political donations, campaign finance and lobbying. Unfortunately, there appears to be little appetite in the major parties for the kinds of institutional reforms required to address these sources of democratic deficit.

## Party values and policy design

In an ideal world, policy proposals, policy design and supporting legislation are consistent with the stated values, ideals and priorities of the governing party, and so keep faith with the party membership and their voter base and the expectations of voters at large. And in general, we have seen a high degree of fidelity between party ideals and the actions of government. Sometimes, however, the link between ideals and actions has been tested and stretched by political pragmatism and can lead to internal tensions or rifts between elected representatives and the party membership. An obvious example has been the treatment of asylum seekers by both Labor and Liberal governments – in particular, mandatory detention and off-shore detention of so-called ‘irregular arrivals’. Government actions here have been portrayed by critics as either an abrogation of classical liberal values (in the case of the Liberal Party of Australia) or humanist traditions (in the case of the Labor Party).

In general, governments and ministers intend to keep their promises, but circumstances can curtail their aspirations. A detailed analysis of 232 election promises made in six policy areas by the Gillard Labor government during the 43rd Parliament (2010 to 2013) was undertaken by Carson, Martin and Gibbons (2019). Working from sources such as *Hansard*, official political communications, budget papers and media reports, the researchers found that five out of every six promises (87 per cent) were kept, although some ‘needed to be altered in some way and were only partially kept’, reflecting ‘the compromise required to get bills through the two Houses, neither controlled by the Labor party’. In spite of this, the Gillard government ended up being ‘tarred with perceptions of deception’.

## Whose interests are served by the policy?

It might be popularly supposed that policy settings are responsive to, and guided by, the preferences of electors, as interpreted and mediated by political actors. However, it is more realistic to suppose that voter preferences are of lesser importance than those of interest groups with the influence and means to donate money (and to openly back) political parties. This is consistent with the ‘investment theory’ of political influence first outlined by Thomas Ferguson (1983); he further expanded upon this in *Golden Rule: The Investment Theory of Party Competition and the Logic of Money-driven Political Systems* (1995). Ferguson argued that when political parties are reliant on donors to raise campaign funds, they are also highly susceptible to the influence of wealthy donors seeking to shape policy settings to suit their interests (see also [Chapter 7](#) on the political power of business). Moreover, where information flows can be shaped by wealthy ‘investors’, electors might be persuaded to vote *against* their own interests.

Between elections, wealthy interests can exert considerable influence on Australian policy in ways that might be inimical to the public interest and trust in government. In 2010, for example, the Rudd Labor government capitulated to an overwhelming media and political campaign mounted by the mining industry against its proposed Resource Super Profits Tax (RSPT) ([Sanyal and Darby, 2011](#)). The RSPT was based on a recommendation included in the Henry Tax Review ([Henry, 2010](#)) to tax mining profits flowing from the 2010 commodity boom. Yet the Rudd government was castigated by the conservative press as ‘anti-business’ and ‘out-of-touch’ ([Manne, 2011](#)). In the end, the government introduced only a watered-down Minerals Resource Rent Tax (MRRT), which was itself later repealed by the Abbott Coalition government in 2014 ([Murray, 2015](#)).

Sometimes, however, lobbying by civil society organisations has encouraged governments to change course by mobilising public opinion against policy proposals. For instance, in 2021 the Morrison Liberal-National Coalition government announced plans to implement ‘independent’ reviews for clients of the National Disability Insurance Scheme (NDIS) to determine claimants’ eligibility ([Jervis-Bardy, 2021](#)). The reviews would thenceforward be carried out by NDIS-appointed healthcare professionals using standardised tools that replaced the existing system in which prospective participants chose their own doctors and health professionals to conduct the assessments ([Michael, 2021](#)). The government contended that the new system would be ‘fairer’ and result in more consistent assessments. The opposition, cross bench MPs and disability advocates, however, portrayed the move as a ‘cost cutting exercise’ and lacking in empathy ([SBS News, 2021](#)). Following an ‘enormous backlash’ by people with a disability and their advocates, and resistance from State and Territory disability ministers, the Commonwealth relented ([Guardian, 2021](#)), and placed the implementation of standardised assessments on indefinite hold ([SBS News, 2021](#)).

It could be argued that policy investors tend to exacerbate the democratic deficits associated with the policy process whereas civil society generally seeks to remedy democratic deficits. However, civil society and big business do not occupy a level playing field. In general, registered not-for-profit organisations in Australia are not especially wealthy and refrain from participating in partisan political activities as this might disqualify them from charitable status. In addition, many not-for-profits also provide services under government contracts containing clauses that constrain their ability to engage in policy advocacy. Business interests are not similarly constrained, and do not operate under the same pressures for transparency or public scrutiny.

## Has the need for the policy been established?

Theories of policy-making generally assume that action is taken only when a significant problem emerges and there is a widespread or shared concern about it. Some policy proposals, however, might best be described as ‘solutions looking for problems.’ Occasionally, politicians come under the sway of some interest group or think-tank that is promoting a policy solution to some purported problem. And they may become so enamoured with the elegance of the solution on offer that they neglect to establish that a problem exists – or, if it does exist, that the ‘problem’ warrants the cost and effort required to implement the solution. In some instances, this has involved the problematisation of particular societal groups – for example, First Nations peoples, unemployed young people, or asylum-seekers. In others it has involved problematising public institutions – for example, the public service, statutory or regulatory bodies, or even government itself. Some might argue that the waves of structural reforms implemented under the banner of New Public Management – downsizing, privatisation, deregulation, commercialisation, outsourcing – were offered as solutions to the problem of big, inflexible, unresponsive, inefficient and expensive government. Debate continues about which was worse, the cure or the disease?

One clear example of a ‘solution looking for a problem’ from the last term of the Morrison Coalition government (2019 to 2022) was a proposal to require Australian voters to produce identification at the polling booth ([Karp, 2021](#)). The Electoral Legislation Amendment (Voter Identification) Bill 2022 represented a significant departure from historical practise wherein Australian voters are only required to have their names crossed off a list of eligible voters ([Parliament of Australia, 2022](#)). Compulsory voter ID was championed by the One Nation Party and reflected tropes then prevalent in American political discourse concerning unfounded allegations of widespread voting irregularities in the 2020 USA election ([UNSW Newsroom, 2021](#)). Indeed, the RMIT Factlab reviewed claims of multiple voting and found that voter fraud in Australia was ‘negligible’ ([2022](#)). This finding was supported by evidence given in 2019 to the Joint Standing Committee on Electoral Matters by the Australian Electoral Commissioner, who emphasised that multiple voting is ‘by and large a very small problem’ ([Parliament of Australia, 2019](#)). Barely two months after it was announced the government withdrew the Bill in the face of a widespread backlash and uncertainty around support by a key crossbench senator ([Quiggin, 2021](#)).

Even where there is broad agreement about the existence of a problem, whether the proposed solution is the ‘right’ one may still be debated. For example, on the question of climate change and other environmental problems such as pollution, deforestation, threatened species, et cetera, the policy preferences of the major parties are often at odds, and the policy preferences of governments are often at odds with public opinion (see [Chapter 27](#)). Even when a policy solution has gained broad acceptance, the public and other communities of interest might feel that it is compromised by ideological rigidity, capture by special interests, or political expediency.

## Is the policy ‘legal’?

In Australia public policy derives legal authority from the Constitution, supporting legislation passed by Parliament (see [Chapter 2](#)), and delegated (or *subordinate*) legislation made by ministers and officials with powers specifically conferred on them ([O’Sullivan, 2011](#)). A fundamental democratic obligation on ministers (and the APS) is to consistently ensure that public policy is always lawful. On occasion, however, already enacted government policies have been overturned because subsequent legal challenges revealed that they lacked a sound constitutional or legal basis.

In 2011, for instance, the full bench of the High Court found unlawful the Gillard Labor government’s plan to implement an agreement that involved transferring from Malaysia 4,000 persons certified as refugees, in exchange for the Malaysian government accepting 800 asylum seekers from Australia ([O’Sullivan, 2011](#)). In another example, in 2014 the High Court unanimously ruled as unconstitutional a Howard-era policy, the National School Chaplaincy Program, implemented eight years earlier to enable the Commonwealth to fund schools to employ chaplains to provide counselling support for students ([ABC News, 2014](#)). And in 2021, the Federal Court of Australia ruled illegal the Morrison Coalition government’s so-called ‘Robodebt Scheme’, a scheme through which Australia’s welfare payments agency Centrelink sought to recover alleged over-payments to pensioners. The Court described it as a ‘very sorry chapter in Australian public administration’ ([Henriques-Gomes, 2021](#)). (See [Chapters 13](#) and [14](#))

In each of these cases the courts did not find that the government *knowingly* implemented unlawful policy. Nevertheless, were it not for the legal action taken by the plaintiffs, the unlawful nature of the policies would not have come to light. While these cases demonstrate that public policy must be lawful, and that on occasion policy can be overturned via recourse to the courts, legal action is costly and is not an option for ordinary citizens. Were it not for the financial backing of civil society organisations (CSOs) or (in the robodebt case) a class action led by a major law firm, these policies might have remained unchallenged.

## Is the policy process transparent and accountable?

Not infrequently, the implementation of public policy occurs in ways that deviate from the normative expectations of good public administration, owing to deficiencies in transparency, accountability, governance and/or process ([Commonwealth Ombudsman, 2007](#)). Often such deficiencies reflect shortcomings in organisational culture, or capacity and capability deficits (for example, insufficient resources or relevant experts) ([Katsonis, 2019](#)). In some cases, the spirit of a policy that could have public benefits can be corrupted when implementation is distorted by political interference.

In 2020 the Australian National Audit Office ([ANAO, 2020](#)) found that \$100 million in grant funding awarded by the Minister for Sport under the Community Sport Infrastructure Program ‘was not informed by an appropriate assessment process and sound advice’ and showed ‘evidence of distribution bias’. Their report concluded:

*The award of funding reflected the approach documented by the Minister's Office of focusing on 'marginal' electorates held by the Coalition as well as those electorates held by other parties or independent members that were to be 'targeted' by the Coalition at the 2019 Election. (ANAO, 2020)*

In a later audit of the administration of grants under the larger, \$660 million National Commuter Car Park Fund, ANAO (2021) found that: 'Departmental advice did not contain an assessment against the investment principles or policy objectives and it was not demonstrated that projects were selected on merit.' A large majority of the sites selected for funding (77 per cent) were located in electorates held by Liberal or National (that is, government) MPs. A majority of projects (64 per cent) were located in Victoria where:

*Coalition-held electorates [constituencies] were twice as successful in attracting funding as those held by the ALP at the time of selection. Further in this respect, all seven 'successful' Coalition-held electorates attracted multiple projects – ranging from two to six projects. (Ng, 2021)*

Both these cases were labelled as exercises in 'pork-barrelling' by the opposition and crossbenches, and by the political commentariat (Podger, 2021). One observer commented:

*Australia has a single member electorate parliamentary system, which makes it more susceptible to pork-barrelling than multi-member electorates like Norway or Spain. The belief is that politicians who 'bring home the bacon' for their constituents are electorally rewarded for doing so.*

*This means there are incentives for the central cabinet to strategically apportion benefits to marginal electorates to increase prospects of electoral success. There is also an incentive to bias the apportionment of funds towards the party in power ... In short, rorts scandals keep happening because governments believe that channelling money to marginal and government electorates will win them elections. (Ng, 2021)*

The sport clubs and car parks programs both failed the standards of transparency, accountability or administrative effectiveness most electors would hope to see. Instead, both confirmed the low expectations that many Australians hold for the political class. When elected representatives make decisions about the use of public funds based primarily on narrow political considerations – whether or not they have legal authority to do so – they contribute to the democratic deficit that many Australians believe afflicts our democracy.

## Does the policy have (or need) a Social Licence to Operate?

The concept of a Social Licence to Operate (SLO) originated in, and is usually associated with resource extraction industries (CSIRO, 2020). However, it is increasingly being applied in other domains, and is an emergent organising concept in the delivery of human services (Butcher, 2019). Social Licence to Operate is fundamentally concerned with issues of transparency, accountability, legitimacy and, most importantly, trust, particularly where groups have had little or no input into or influence on decisions affecting their lives – especially those made by big

business or by government. SLO seeks to give voice and agency to stakeholder communities that not only stand to be affected by policy decisions, but also have historically been marginalised by, or had impaired access to, conventional avenues for political engagement.

Although SLO has crept into the language of Australian politics and the bureaucracy, as yet there is no consistent operational framework that allows policy-makers to determine whether an SLO exists. Governments might claim that seeking an SLO is redundant because of an implicit 'electoral licence to operate'. Yet, given the scale of the trust deficit, it might be wise to treat such claims cautiously or sceptically. A democratic audit can ask questions along the following lines to help establish whether an implicit or explicit SLO exists:

- ◆ Is there reason to suppose that an SLO may be relevant to a given policy proposal?  
For example:
  - Does the policy domain have a history of democratic and/or trust deficits?
  - Could social harms arise as a result of poor implementation?
  - Is there a legacy of affected stakeholders being politically or economically marginalised?
- ◆ Have the costs and benefits, or disbenefits, of policy proposals been clearly communicated to affected stakeholders?
- ◆ Were there meaningful avenues for the public and/or affected stakeholders to make inputs into policy design and implementation?
- ◆ Were the communication or consultation approaches utilised with the public or affected stakeholders inclusive and accessible? For example, was the language appropriate for the target audiences? And were appropriate avenues utilised, especially for marginalised or hard-to-reach communities?
- ◆ Did affected stakeholders show confidence and *trust* in the process underpinning the development and implementation of the policy?

Consider a recent policy case for which it might be argued that a social licence either did not exist or existed imperfectly. In November 2019, PM Scott Morrison announced plans for a A\$499 million project to re-develop the Australian War Memorial (AWM) in Canberra ([Australian War Memorial, 2019; 2021](#)). The nine-year scheme entailed major refurbishments to the AWM precinct and a near doubling of its exhibition space. It also required the demolition of Anzac Hall, an award-winning building completed in 2001 at a cost of \$17 million ([Australian Institute of Architects, 2021; Stead, 2021](#)). The proposed re-development was widely criticised by heritage specialists ([Cheng, 2019](#)), the Australian Institute of Architects, and even former directors of the Memorial ([Australian Institute of Architects, 2021; Stead, 2021](#)). Concerns focused on the high costs and the demolition of the existing exhibition hall. An inquiry by a parliamentary committee in 2020 supported the re-development proposal, but noted criticisms of the AWM's consultation process and acknowledged divergent views held by members of the public and relevant stakeholders ([Parliamentary Standing Committee on Public Works, 2021](#)). A majority of people making public submissions did not support the re-development overall ([Stewart, 2021](#)). Yet in June 2021 the National Capital Authority (NCA) ([2021](#)) cleared the way for early works to proceed ([Parliamentary Standing Committee on Public Works, 2021](#)). Although there was a consultation process overseen by the AWM, and a process of regulatory review by the NCA as well as an inquiry by a parliamentary committee, the result of those processes was, in the minds of many, a foregone conclusion. Neither the AWM, the NCA, nor the joint committee had any incentive to overrule the government's decision, regardless of public

opinion. As one AWM employee observed, the consultation process ‘wasn’t a poll on whether the project was supported’ (**Parliamentary Standing Committee on Public Works, 2021**). This statement underlines a problem that commonly afflicts public consultation processes: they are about *telling* the public about policy, rather than *listening* (see also, **Stewart, 2009**).

It is understandable that changes affecting a cherished national institution like the Australian War Memorial – which commemorates (and some say glorifies) Australian martial history – will elicit strong public opinions. That diverse stakeholders held diametrically opposing opinions about the appropriateness of the AWM re-development proposal was not unexpected. Although there was some public support for the re-development – including key stakeholders representing the interests of Australian veterans – it could not safely be concluded that this amounted to a social licence.

## Conclusion

Public policy is an artefact of political contest, a contest governed by the democratic norms prevailing in any given polity. Moreover, public policy is the ultimate formal output arising from political contest. One might expect, therefore, that policy – and policy outcomes – will reflect and embody the democratic virtues and deficits endemic within a political system. This chapter has explored some important sources of democratic deficit in Australian policy-making from the federal sphere. Similar deficits no doubt operate at the state and territory levels. Although these examples generally concern instances of democratic deficit, this is partly a function of the extent to which the cases engendered heated public debate: by contrast, democratic ‘enhancements’ appear to be less ‘newsworthy’.

Much of the literature dealing with participatory approaches to policy design and implementation concerns policy-making in the human services space. Participatory approaches can best be applied in policy spaces where there is a clear line of sight between the application of policy and its impact on the community. There are other policy spheres, however, where the line of sight is opaque, or where ordinary citizens cannot be expected to possess the detailed specialist knowledge required. National security, defence, trade and foreign affairs, for example, are policy fields that are generally the domain of subject area specialists. In this regard intermediary organisations, academic researchers, think-tanks and civil society organisations can act as important vanguards against executive overreach.

Former British PM Winston Churchill famously said in 1947:

*Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time ... (Churchill, 1947; see also Quinault, 2001, p. 218)*

Often cited in broad defence of democratic principles, this famous passage may seem to suggest that democracy is only the ‘least worst’ form of government yet devised. The democratic model to which Churchill alluded was, and remains, an imperfect vehicle for the expression of the popular will and the balancing of competing and sometimes conflicting interests: and it is almost certain that Churchill could not have envisioned many of the modern

adaptations to contemporary democratic practice in Australia. Of course, no model of policy-making is perfect and Australia's is no exception. But perhaps we can go so far as to say that for all its imperfections Australian policy-making, like Australian democracy itself, might be the 'least worst' alternative.

## Note

- 1 Here 'parties' are referred to in the plural because in Australia governments often comprise at least two parties and, sometimes, independents. In the case of Liberal-National Coalition governments, for example, the electorate would reasonably expect each party to advocate within government for policy positions and formulations consistent with their core values and priorities. Similarly, in Labor-Green governing coalitions at the state and territory level (such as have occurred in the Australian Capital Territory and Tasmania) one would expect the minor partner (the Greens) to advocate for their preferred policy positions within the bounds of any coalition agreement.

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