Percy Allan AM
Chair, Evidence Based Policy Research Project
An Independent Research Project auspiced by The newDemocracy Foundation
(https://www.newdemocracy.com.au/our-work/477-evidence-based-policy)

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Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
E: legcon.sen@aph.gov.au

Submission to the Australian Senate Legal and Constitutional Affairs Reference Committee's Inquiry into Nationhood, National Identity and Democracy

Dear Ms Dunstone,

This submission is on behalf of the Steering Committee of **the Evidence Based Policy Research Project,** an independent research initiative auspiced by the newDemocracy Foundation as part of their broad remit to seek improvements to the functioning of Australian democracy. It is similar to a submission that was made earlier this year to political party leaders in the NSW Legislative Council who subsequently acted upon its advice.

Issue

How to manage contentious Bills introduced in the Australian Senate to ensure they are evidence and consultative based.

Background

In 2018 the non-partisan newDemorcracy Foundation facilitated a research project into the quality of government decision-making at federal and state levels.

It commissioned a free market think tank (IPA) and a social democratic think tank (Per Capita) to separately rate 20 case studies using a ten point criteria for good policy-making devised by Ken Wiltshire AO, Professor of Public Administration at the University of Queensland Business School.

Professor Wiltshire is also the Australian Representative on the Executive Board of UNESCO and a member of the Commonwealth Grants Commission.

The think tanks' yes or no scores on the ten Wiltshire questions were remarkably similar in almost all cases. Here are their Average Yes Ratings out of a possible total score of 10.

Excellent Process:

- Vic: Voluntary Assisted Dying Law (Average rating 9/10)
- Qld: Legalising Ride-sharing Apps (9/10)

Sound Process

- NSW: Criminal Justice Reforms (8.5/10)
- Vic: Access to Medical Cannabis Law (8/10)

Acceptable Process

- Fed: Electoral Amendment Act (7.5/10)
- NSW: Greyhound Racing Laws (7.0/10)
- Vic: Aboriginal Victorians' Treaty Process 7.0/10)

Deficient Process

- Fed: National Energy Guarantee (6.0/10)
- Fed: Future Submarine Program (6.0/10)
- Vic: Climate Change Law (6.0/10)
- Qld: Alcohol Fuelled Violence Law (6.0/10)
- Fed: Enterprise Tax Plan (5.0/10)

- Fed: Replacement of 457 Visa (5.0/10)
- Qld: North Queensland Stadium (5.0/10)
- Fed: Broadcasting Reform Law (4.0/10)
- NSW: Fire & Emergency Services Levy (4.0/10)

Unacceptable Process

- Fed: Marriage Law Postal Survey (2.5/10)
- NSW: Local Council Mergers (2.5/10)
- Qld: Vegetation Management Laws (2.5/10)
- Fed: Creation of 'Home Affairs' Dept. (2.0/10)

Wiltshire Criteria

The ten questions asked of each federal and state government policy were:

1. **Need**
   Was there a statement of why the policy was needed based on factual evidence and stakeholder input?

2. **Objectives**
   Was there a statement of the policy's objectives couched in terms of the public interest?

3. **Options**
   Was there a description of the alternative policy options considered before the preferred one was adopted?

4. **Mechanisms**
   Was there a disclosure of the alternative ways considered for implementing the chosen policy?

5. **Analysis**
   Was there a published analysis of the pros/cons and benefits/costs of the alternative options/mechanisms considered in 3 and 4?

6. **Pathway**
   Was there evidence that a comprehensive project management plan was designed for the policy's rollout?

7. **Consultation**
   Was there further consultation with affected stakeholders after the preferred policy was announced?

8. **Papers**
   Was there (a) a green paper seeking public input on possible policy options and (b) a white paper explaining the final policy decision?

9. **Legislation**
   Was there legislation and adequate Parliamentary debate on the proposed policy initiative?

10. **Communication**
    Is there an online official media release that explains the final policy in simple, clear and factual terms?

Comment

The near unanimous scores of the Right and Left think tanks suggests that while Australians disagree on political values and direction they are likely to agree on the process they want governments and parliaments to follow in framing and approving legislation on contentious matters.

The think tanks found that the three things most missing in government decision-making were:

- Cost/benefit analysis,
- A Rollout Plan in conjunction with a policy statement, and
- A Green Paper to elicit public feedback in advance of a decision.

Professor Wiltshire AO, the author of the project's benchmarking methodology remarked:

"My 35 years of research suggest that good policy processes result in better outcomes than decisions made without a strong evidence base and close consultation with stakeholders."

Professor Percy Allan AM, chair of the Research Project, observed:

"Governments lose support because of half-baked policies foisted onto an unwitting public which provokes a backlash. A more productive and popular path is to target real community needs through fact-gathering and citizen-input when crafting a policy. That removes the element of surprise and wins consensus. Good policy process is also good politics."

The research found that contentious policy issues that underwent a thorough Green/White Paper decision-making process were better received by the media, public and parliament than those that were decided on the run or intentionally by-passed good process. Indeed the latter largely back-fired and required intensive damage control.

This suggests that any Government Bill on a highly contentious issue stands a better chance of obtaining the approval of an Upper House where governing parties are not in a majority if that Bill is preceded by a proper and transparent Green/White paper process to elicit the known facts, policy options, their pros and cons and citizen feedback before MPs are asked to consider it.

NSW Legislative Council Action

The NSW Legislative Council after lobbying by the Chair of the EBP Research Project agreed to the following amended motion on the 20th June 2019:

1. That the Procedure Committee inquire into and report on the parliamentary modernisation proposals that:

(a) prior to its introduction in the Legislative Council, all highly contentious government legislation—defined as a bill likely to substantially alter economic, employment, social, legal or environmental conditions in New South Wales and to provoke widespread public interest in the proposed changes—be subject to a comprehensive and consultative green and white paper process; and

(b) A modified research and deliberative process be available for highly contentious private members' bills to ensure that the intent and possible ramifications of the draft legislation are fully explored.

2. That, when a member who has carriage of a highly contentious private members' bill moves to refer the bill to a committee for inquiry and report, the member may also move that:

(a) The New South Wales Parliamentary Library prepare an Issues Paper on the bill;

(b) The newDemocracy Foundation be commissioned to facilitate community input into the bill, such as a citizens panel or jury, to complement the traditional forms of evidence gathering by committees, such as seeking submissions and taking oral evidence, and

(c) Legislative Council committees will respect the foundation's remit as an independent and non–partisan research organisation.

3.That the operation of paragraph (2) of this resolution lapse on the last sitting day of 2020 and then stand referred to the Procedure Committee for inquiry and report.

4. That the House notes that The newDemocracy Foundation has offered to provide this service during 2019 and 2020 for no charge to the Parliament.

Source: https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-79292

Recommendation

That the Australian Senate adopt a procedural rule requiring any future Bill on a highly contentious public issue be preceded by a full Green/White Paper process.

The **Green Paper** should inform the general public of:

1. The relevant facts and figures about the social, economic , environmental or other problem/s that any legislation is meant to address; and
2. The alternative solutions to fixing the problem/s and the pros and cons as well as the quantified costs and benefits for each of these policy options.

The **White Paper** should inform everyone of the:

1. Public responses to the Green Paper, including the views of an impartially chaired focus group representative of the wider public and exposed to contending arguments; and
2. The reasons for the Government's decision to favour a particular policy in preference to other options in its proposed legislation.

A Departmental Green Paper would:

a) Present factual evidence to demonstrate that a particular public issue (e.g. social, economic, environmental or financial problem) warrants priority attention;
b) Present known public views on the issue (e.g. drawing on opinion polls and focus groups)
c) Present 2-3 alternative solutions (i.e. options) for fixing the problem and the pros and cons of each option.
d) Quantify the wider public cost/benefits of each possible option.
e) Seek public input through formal submissions, social media and a citizens' jury (comprising a representative cross-section of citizens with the right to cross-examine experts).

A Government White Paper would:

(a) Repeat the content of the Green Paper, but take account of public input to make corrections to factual evidence, expand on possible options for solving the problem and update pros/cons and cost benefit analysis of options to reflect fresh information obtained through the public engagement phase of the Green Paper.
(b) Decide the optimal policy option (i.e. solution) based on weighing up the relative pros and cons, public cost/benefit and general public views canvassed in the White Paper.
(c) Provide a simple flow-chart of the main steps planned for rolling out the preferred (optimal) policy option.
(d) Provide key performance benchmarks to gauge the policy's success after 3 to 5 years. These policy targets should be SMART (i.e. specific, measurable, achievable, relevant and time-based).

This recommendation is submitted for consideration and support in the Inquiry's final report.

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