

Access to Information

- 4.1 This chapter outlines the current information sharing arrangements between the Parliamentary Budget Officer and Executive agencies and discusses access to information in practice. The question of whether legal guarantees of access to information should be adopted is considered.
- 4.2 Four specific aspects of access to information issues are also canvassed:
- the timeliness of agency responses;
 - access to the detail of individual components of the Contingency Reserve;
 - cost barriers where information is held by third parties within the public or private sector; and
 - legal barriers where statutes prevent disclosure of information and provisions that require an exercise of administrative discretion.

Background

- 4.3 As outlined in chapter 2, the Parliamentary Budget Office (PBO) is a permanent body that provides independent non-partisan information and analysis on a confidential basis on request to parliamentarians on budget, fiscal policy and the financial implications of proposals.¹
- 4.4 At the time of a general election the PBO shifts to a more public role. There is no mandatory requirement for Parliamentary parties or independents to cost their election commitments, however, under the *Charter of Budget Honesty 1998*, they may choose to have their publicly announced policies costed by the PBO or by the Department of the Treasury.²

1 S.64B *Parliamentary Service Act 1999*; PBO, *Submission 1*, p.9.

2 S.64J (2), (5) *Parliamentary Service Act 1999*.

- 4.5 Since 2013, the Parliamentary Budget Officer has also been required to publish an assessment of the individual costs and budget impact of the election commitments of the Parliamentary parties, within 30 days of the election.³
- 4.6 The mandate also includes a self-initiated program of research on budget and fiscal policy; and the provision of submissions to parliamentary inquiries if requested to do so.
- 4.7 In performing these functions the Parliamentary Budget Officer is required by law to use the Government's economic forecasts, parameters and fiscal estimates.⁴ It is crucial therefore, that PBO has timely access to information held by the Executive, and that information includes data of all kinds including models and methodologies.
- 4.8 In its current form, Part 7 Division 2 of the *Parliamentary Services Act 1999* contains no enforceable guarantees of access to information.⁵ During the 2011 inquiry, the then Select Committee considered various approaches and decided that, rather than adopting legal guarantees at the outset, the Commonwealth model should be based on non-binding arrangements that would be monitored and reviewed.⁶ It also chose not to situate the PBO within the framework of the *Freedom of Information Act 1982* (Cth) (FOI ACT). Rather, the intention was to foster a pro-disclosure culture built on co-operative relationships supported by appropriate levels of protection and confidentiality of sensitive information.⁷

Protocol on Engagement between Commonwealth bodies and PBO

- 4.9 A *Protocol to govern the engagement between Commonwealth bodies and the PBO* (the Protocol) was signed by the current Prime Minister, the Treasurer and the Minister for Finance in January 2014. The Protocol expresses the intention of current Government to support the work of the Parliamentary Budget Officer, and requires Commonwealth bodies to

3 *Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2013* inserted sections 64E (1) (da); 64MA, 64MAA, and 64MC.

4 S.64E (2) *Parliamentary Service Act 1999*.

5 Under s.64F the Parliamentary Budget Officer may enter into arrangements with heads of agencies to obtain information and documents, including provision for confidentiality of the information and documents.

6 PBO, *Submission 1*, p. 9; see also Report of the *Joint Select Committee of Inquiry into the Parliamentary Budget Office*, March 2011, pp.61-65; The Select Committee also considered the NSW model, and overseas examples, including Canada and the UK.

7 In NSW, agencies may decline to comply with a request from the PBO on the grounds provided under freedom of information law. During the 2011 inquiry this approach was criticised as placing the PBO in the same position as a member of the public.

adopt a pro-disclosure approach while having regard to other relevant legal frameworks.

- 4.10 The Department of Finance stated the aims of the Protocol are to:
- ensure that relevant information is provided to PBO;
 - outline the responsibilities of the Heads of Commonwealth bodies, and their staff, in engaging with the PBO;
 - establish procedures to ensure consistency and confidentiality of information provided to and by the PBO; and
 - ensure the integrity of the Government's official budget estimates is maintained.⁸

Memorandum of Understanding

- 4.11 In September 2012, the Parliamentary Budget Officer signed a Memorandum of Understanding (MoU) with the then Secretaries of the Departments of Finance and Treasury, and the heads of all other Commonwealth agencies in mid October 2012.⁹
- 4.12 The MoU sets out the roles and responsibilities of the parties and elaborates the operational arrangements in more detail. This includes:
- formal procedures for requesting information;
 - an obligation that agencies respond to urgent requests within 5 working days and routine requests within 10 working days;¹⁰
 - provision for agencies to negotiate confidentiality arrangements with the PBO; and
 - a requirement that the PBO only use the information for the purpose for which it is released, and protect information from unauthorised disclosure.¹¹
- 4.13 The *Parliamentary Service Act 1999*, the Protocol and the MoU encourage maximum disclosure to the PBO, rather than routinely relying on the FOI Act as the benchmark for release. Where it is not possible to release information, the Head of Agency must provide a written explanation outlining the reasons for the non or partial release.¹²

8 Department of Finance, *Submission 6*, p.1.

9 Section 64F enables the Officer to make 'an arrangement' with Heads of Agencies to obtain information and documents relevant to the Officer's function, including provision for confidentiality of the information and documents.

10 Clause 5.2 MoU.

11 Clause 6.2 MoU.

12 S. 64 V (4A), (5) *Parliamentary Service Act 1999*, and Clause 5.2 MoU.

Access to information in practice

- 4.14 The PBO reported that it has made extensive use of the MoU to obtain information, data and models from agencies to enable it to meet requests and build its capability to undertake budget analysis.¹³
- 4.15 From September 2012 to the end of June 2014, 728 responses from agencies were received in response to information requests.
- 4.16 The PBO has also developed standing agreements with agencies for 'over 50 information updates following each economic and fiscal update'. The updates cover information such as the 'economic parameters underpinning fiscal estimates, and models used to estimate program forward estimates'.¹⁴ This is intended to build PBO's capacity and self-sufficiency and reduce the number of requests being made to agencies.
- 4.17 The Australian National Audit Office (ANAO) audit report notes that a key contributor to PBO's success has been 'the good cooperation received from Commonwealth agencies, most notably the Departments of Treasury and Finance'.¹⁵ Of the 20 agencies interviewed for the audit, all agencies reported a general intent to adhere to the spirit of the Protocol, although some identified instances where the timeframe could not be met.¹⁶
- 4.18 An example of a standing agreement was provided by the Department of Finance:

Since 2013, Finance has had a standing agreement with the PBO. Finance provides regular information to the PBO after each economic update, including information and data from the Commonwealth Budget Management System. As the relationship has matured, the scope of this standing agreement has been broadened to accommodate the core data requirements for the PBO.¹⁷

Requests declined or not pursued

- 4.19 In response to a question on notice, the Parliamentary Budget Officer advised there have been 11 instances where requests for information have been declined:
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13 PBO, *Submission 1*, p.10.

14 PBO, *Submission 1*, p.10

15 PBO, *Submission 1*, p.3.

16 ANAO Report, p.70; the examples included instances where a request involved the extraction of historical data, where information needed to be obtained from multiple portfolios, competing priorities in the lead up to a Budget; or the need to deal with multiple requests from PBO.

17 Department of Finance, *Submission 6*, p.1.

- five related to third party holdings and were not pursued due to costs to PBO, such as the Australian Government Actuary, for access to their modelling;
- three on the grounds that the information requested was confidential because it was contained in the Contingency Reserve or related to a decision taken by not yet announced;
- one related to the Higher Education Loan Program and provisions of the *High Education Support Act 2003* prevented release;
- one relating to the Petroleum Resource Rent Tax was declined by the Department of Industry on the grounds of 'commercial-in-confidence'; and
- one involved Treasury forecasting models - no reasons were given in writing, but Treasury provided PBO with 'useful information on the methodology used to forecast revenue'.¹⁸

Timeliness

- 4.20 The ANAO audit found that timeliness was an issue, especially in the initial phase of PBO operations. In summary, the ANAO found:
- that between July 2012 and March 2014, of 653 requests 48% responded by the due date and 52% responded after the due date;¹⁹
 - PBO data also showed that 'there were 18 responses that took more than 51 business days to provide';
 - timeliness was an issue for agencies receiving the highest number of requests, but as requests involved more updates timeliness improved.²⁰
- 4.21 These findings must be balanced against the fact that PBO was established during a busy election period, information requests from parliamentarians peaked during the 2013 election and while the PBO was establishing its repository.²¹
- 4.22 The PBO confirmed that of the 728 responses received between September 2012 to 30 June 2014 half were received late, with the average response being four days late and the average response overall being 12 days.²²
- 4.23 Several factors were influencing agency responses:
- uncertainty about how to respond;

18 PBO, *Supplementary Submission 1.1*, pp.1-2.

19 ANAO Report, Table 3.1, p.66.

20 ANAO Report, p.67.

21 ANAO Report, pp.67-68.

22 PBO, *Submission 1*, p.11.

- lack of awareness of the MoU, especially lack of awareness that the MoU includes models involved in the generation of information;
- narrow interpretation of 'model' to sophisticated econometric analysis rather than simple calculations that underpin estimates in the budget;
- concern about providing models used in preparing material for Cabinet consideration, even where policy options need not be revealed; and
- internal agency clearance processes, especially where underlying calculations may not have been fully documented.²³

4.24 Importantly, PBO observed that:

...potential or perceived political sensitivity of the information has led some agencies to adopt a cautious and conservative approach to the information provided to PBO.²⁴

Committee comment

4.25 The committee is concerned that over the time period analysed by the ANAO, that 52% of responses to requests from the Parliamentary Budget Officer were received after the timelines prescribed by the MoU.

Recommendation 1

4.26 **The committee recommends that the Government ensures that Commonwealth agencies meet the timelines in response to a request from the Parliamentary Budget Officer as specified in the Memorandum of Understanding.**

Contingency Reserve

4.27 The Contingency Reserve (CR) is an accounting entry that appears in aggregate expenses in the Commonwealth's budget figures (Budget Paper 1). It is an allowance that reflects several components including e.g. decisions made but not yet announced; and the tendency for estimates to

23 PBO, *Submission 1*, p. 11.

24 PBO, *Submission 1*, p.11.

- be revised upward.²⁵ In addition, provision for individual measures identified in Budget Paper 2 may be included in the CR where details cannot be published due to commercial sensitivity, national security or where disclosure would disadvantage the Commonwealth.²⁶
- 4.28 In July 2013, the PBO made a general request to the then Department of Finance and Deregulation for access to all individual line items in the CR. The Secretary of the Department refused on the grounds that 'disclosure would be contrary to the public interest'.²⁷
- 4.29 Jane Halton PSM, Secretary of the Department of Finance stated:
- Given the commercial sensitivity of some information (and the potential harm to the Commonwealth interests) as well as to national security, Finance relies on exemptions that are available under the FOI Act to exempt such information from release or disclosure as appropriate.²⁸
- 4.30 The PBO also identified two occasions when a request was declined on the basis that it was confidential because it was contained in the CR, or related to a decision taken but not yet announced.²⁹ For example, 2013 Post Election Report costings for the Coalition and Australian Greens were affected because PBO was unable to 'verify the magnitude the provision made by the former Government for the operation the Regional Processing Centre in Nauru'.³⁰
- 4.31 The ANAO said that:
- While this only affected two policy costings during the preparation of the 2013 Post-Election Report, the likelihood remains that the PBO may not be able to determine the net budget impact of certain policies in the future because it does not have this information.³¹
- 4.32 The PBO argued that the reliability and credibility of its costings are reduced by not having access to the detail of the individual components of

25 The aggregate estimates for the CR are published in Statement 6 of Budget paper 1 in Table A1 and Table 17. A description of the items contained within the CR can be found in Appendix B to Statement 6, Department of Finance, *Submission 6*, p.2.

26 Department of Finance, *Submission 6*, p.3.

27 PBO, *Submission 1*, p.12.

28 Department of Finance, *Submission 6*, p.3.

29 *Supplementary Submission 1.1*, p.1. Specific requests were made to the then Departments of Immigration and Citizenship, and Infrastructure and Transport in relation to the costs of operation immigration detention facilities on Nauru and estimated spending on the then Liveable Cities program.

30 PBO, *Submission 1*, p.13.

31 ANAO Report, p.70.

the CR.³² Although only a small number of costings have been effected to date, this significantly understates the impact because:

- by their nature, policies provided for in the CR are more likely to relate to sensitive policy proposals; and
- the possibility there may be a provision in the CR that would be relevant to a policy costing, has an impact on the confidence of parliamentarians in policy costings generally.³³

4.33 There will also be circumstances where lack of access to detail affects the ability of the PBO to assess the actual feasibility of a proposal. The feasibility of the Coalition's policy to *Reduce the public sector headcount by 12,000 through natural attrition* could not be fully assessed because the impact of the efficiency dividend and other policies on agency staffing costs were included as a confidential provision in the CR. This meant that the PBO could not assess whether the reduction in public servants could be achieved without additional redundancy payments.³⁴

4.34 More recently, the *2013-14 Mid-year Economic and Fiscal Outlook* included a statement that the financial implications of a number of the Government's pre-election commitments had been included in the CR. The PBO explained that it has already released costings for the Government's pre-election commitments in the post-election report. In this case, PBO assumed the costings in the post-election report form the basis of the provision for the pre-election commitments.³⁵

4.35 The PBO submitted that:

While the lack of access to the Contingency Reserve has not prevented the PBO from responding to requests since the election, it has reduced the reliability of costings, as there is a risk that the provision in the budget is different to what the PBO has assumed. Moreover, the ability to continue to adopt this approach in the future is limited, particularly where substantive changes are mooted to the details of a policy proposal.³⁶

4.36 Senator Christine Milne, advocated an amendment to the *Parliamentary Service Act 1999* to provide access to the details of the CR:

The PBO already has access to confidential departmental material which it incorporates into its costings. Not once has the PBO revealed to the public or the MP who requested the costing,

32 PBO, *Submission 1*, p.13; *Committee Hansard*, 28 August 2014, p.14.

33 PBO, *Submission 1*, p.13.

34 PBO, *Submission 1*, p.13.

35 PBO, *Submission 1*, p.13.

36 PBO, *Submission 1*, p.13

classified contents or identifiable figures capable of being reverse engineered.³⁷

- 4.37 The PBO argued that agencies should have confidence that sensitive government information is protected from unauthorised disclosure:
- section 64V of the *Parliamentary Service Act* and the MoU require the PBO to protect the confidentiality of information provided by an agency if directed by the head of an agency;
 - the staff are subject to non-disclosure obligations and the hold high level security clearances;
 - the premises is secure and the IT system is a secure network separate to the parliament house system;
 - the PBO is exempt from the FOI Act and material provided by agencies in response to requests is also exempt from release under s.45A of the FOI Act.³⁸
- 4.38 During the hearing the Parliamentary Budget Officer maintained that, as a matter of principle, it is appropriate that he be given access to the detail and reaffirmed that:
- Under our Act we are required to protect any information that is of a confidential nature, whether it is national security related, commercial-in-confidence or cabinet in confidence. That information would purely be used for the purposes of our work, but the detail would not be disclosed.³⁹
- 4.39 The ANAO audit also found that none of the 20 agencies interviewed by the ANAO were concerned about the PBO's treatment of their confidential information.⁴⁰

Legal guarantees of access to information

- 4.40 The Auditor General, Mr Ian McPhee PSM, reaffirmed his view that a body such as the PBO should be supported by clear legal authority to access information. He noted that the lack of legal guarantees meant the existing legal framework, is not aligned with internationally agreed principles. In his view, the MoU arrangements should be supported by

37 Senator Milne, *Submission 4*, p.2.

38 PBO, *Submission 1*, p.14.

39 *Committee Hansard*, 28 August 2014, p.14.

40 ANAO Report, p.71.

legal provisions that make it clear what Parliament expects in terms of access to information.⁴¹

4.41 The Auditor General did not envisage a need for full coercive powers, such as those contained in the *Auditor General Act 1997*, which include taking evidence on oath from officials and ministers. Rather he proposed an umbrella statutory provision that requires Heads of Agencies to provide the Officer with access to all information relevant to performing his or her functions. He suggested the provision would require some elaboration, but that Parliament's intention should be clear.⁴²

4.42 While the MoU has worked well to date he argued that it is important that the PBO can perform effectively in periods of political tension:

I do not want a situation where the PBO could be slowed down by governments or individual ministers, or by particular agencies, in accessing information which is important⁴³

4.43 In his opinion, statutory powers provide the necessary authority that supports cooperative interactions regardless of the political climate. He submitted that, in practice it is not necessary to use them but he could not perform his role effectively without them.⁴⁴

4.44 The Parliamentary Budget Officer stated that while there is a sound argument in favour of having a legislative right to information, experience to date with the MoU, suggests that its absence is not having a significant adverse effect on PBO operations.⁴⁵ Nevertheless, the Parliamentary Budget Officer would not object to having statutory powers to collect information:

If you look at the experience internationally, many of the international organisations do have statutory information gathering powers. The OECD principles, to which the Australian government is a signatory, do suggest the importance of having statutory information gathering powers.⁴⁶

4.45 Senator Christine Milne, Leader of the Australian Greens, submitted that the Australian Greens are highly satisfied with the professionalism of the PBO. She argued that, rather than relying on a fragile MoU, statutory information powers would strengthen the PBO in the discharge of its

41 *Committee Hansard*, 28 August 2014, p.5.

42 *Committee Hansard*, 28 August 2014, p.6.

43 *Committee Hansard*, 28 August 2014, p.6.

44 *Committee Hansard*, 28 August 2014, p.6.

45 PBO, *Submission 1*, p.3.

46 *Committee Hansard*, p.13.

functions.⁴⁷ Including such powers are a principle of good public policy, and PBO's:

... functions should not be at risk in the future purely because of the political imperatives of the Ministers that those Departments are responsible to.⁴⁸

- 4.46 Professor Stewart, Director of the Australian Tax and Transfer Policy Institute, Australian National University, put a slightly different view, and suggested that as the MoU appeared to be working, that it should be kept under scrutiny and not changed at this time. In particular, she drew attention to the Canadian experience, where 'legislative authority seems not to have been sufficient to enable the PBO to obtain information in a timely fashion.'⁴⁹

Federal General Election – obligation to comply with a request

- 4.47 In 2013 the *Parliamentary Service Act 1999* was amended to expand the role of the Parliamentary Budget Officer at the time of a general election, to include a post-election report. The amendments included a power to request information, and an obligation for Heads of Agencies to cooperate with the Officer's requests.⁵⁰
- 4.48 Under sections 64KA and 64MB a Head of an Agency must comply with a request from Parliamentary Budget Officer relating to the:
- costing of publicly announced policies, or
 - the preparation of the post-election report.⁵¹
- 4.49 The Head of Agency must respond in time to allow the information to be taken into account⁵² unless:
- it is not practicable to do so;
 - it would be unlawful to do so;
 - it would require disclosure of confidential commercial information; or
 - it would require disclosure of information that could prejudice national security.⁵³

47 Senator Milne, *Submission 4*, p.p.1-3.

48 Senator Milne, *Submission 4*, p.2.

49 Professor Stewart, *Submission 3*, p.6.

50 *Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2013*; It is noteworthy that while the provisions appear to create a statutory obligation for Heads of Agencies to comply with a request for information, ss. 64KA(6) and 64MB(9) assert that the provisions do not create any rights or duties enforceable in judicial or other proceedings.

51 *Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2013*, s. 64KA, s. 64MB.

52 S.64KA (3) *Parliamentary Service Act 1999*.

53 S.64KA (3) (a) (d); s.64MB (4), (5) *Parliamentary Service Act 1999*.

- 4.50 Agencies may request that some or all of the information provided to the Parliamentary Budget Officer be kept confidential, invoking the confidentiality obligations under section 64V of the *Parliamentary Service Act 1999*.⁵⁴
- 4.51 The provisions reflect the information gathering process in section 32 of the *Charter for Budget Honesty Act 1998*, which apply between the Secretaries of the Treasury and Finance and other Commonwealth bodies.⁵⁵ At the time of the Bill, the Treasury said the justification for the provisions was simply that ‘it is appropriate that similar processes apply for similar tasks in similar circumstances’.⁵⁶
- 4.52 There are some important differences in that sections 64KA and 64MB:
- regulate the relationship between the Executive and an independent office holder with a statutory mandate to service the Parliament, (as distinct from cooperation within the Executive);⁵⁷
 - exclude information that is commercially confidential or that could prejudice national security if disclosed; and
 - enable Heads of Agencies to require that information be treated as confidential.

Committee comment

Legal guarantee of access to information

- 4.53 The 2011 Select Committee came to a considered view that, at least in the first instance, the PBO’s access to information should be based on non-binding arrangements and subject to review. The Protocol and the MoU provide the framework for day to day interactions and, by and large, the arrangements are working well. There is now an opportunity to build on

54 S.64KA (4) *Parliamentary Service Act 1999*.

55 Explanatory Memorandum, *Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2013*, p.14.

56 Daniel Weight, *Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2013*, Bills Digest No.119, 2012-13, p.9; Section 32 *Charter of Budget Honesty Act 1998* provides that:

- (1) To help a responsible Secretary to prepare aspects of a policy costing for which he or she is responsible, he or she may request a Commonwealth body to provide information.
- (2) A Commonwealth body is to comply with a request in time to allow the information to be taken into account in the preparation of the policy costing, unless it is not practicable for the body to do so. The body does not have to provide information if doing so would contravene another law of the Commonwealth

57 Although the Officer is a Secretary of a Parliamentary Department, under s.64P of the *Parliamentary Service Act 1999* the Officer performs functions under s. 64E (1) independent of the Presiding Officers.

- that foundation and consider the wider public interest in securing the role of the PBO into the future.
- 4.54 In a democracy it is generally accepted that legal guarantees of access to information are an essential feature of an independent body established to increase transparency and scrutiny of government activity. In Australia, statutory rights, duties and powers underpin the authority of bodies such as the Auditor General and the Ombudsman. These legal guarantees bring certainty to the roles and responsibilities of the parties and inoculate the independent office from the risks of a changing political climate.
- 4.55 New sections 64KA and 64MB of the *Parliamentary Service Act 1999* provide some legal support to the role of the Parliamentary Budget Officer, but the provisions are limited in application and framed as not creating any rights or duties.
- 4.56 It would be a prudent and timely exercise in good government to strengthen the legal authority of the Parliamentary Budget Officer, by making clear the Parliament's intention that the Parliamentary Budget Officer is entitled to free and timely access to all relevant information. To this end, the information gathering powers of the Parliamentary Budget Officer should be specified in the *Parliamentary Service Act 1999*. The Act already contains legal guarantees for the protection of sensitive Executive information, which underpin the trust and cooperation between the parties. Amending the Act to include an express statutory right of access to information and a statutory duty to comply with a request within a certain timeframe would bring balance to the existing scheme.
- 4.57 The addition of such provisions would remove doubt and enable Heads of Agencies to act with confidence bringing greater symmetry to the relationship between the Executive and Legislature. It would also protect the public interest in ensuring that the PBO is able to perform its functions regardless of the prevailing political climate.

Recommendation 2

- 4.58 **The committee recommends that the legal authority of the Parliamentary Budget Officer should be strengthened by specifying the information gathering powers of the Parliamentary Budget Officer in the *Parliamentary Service Act 1999*. The Government should bring forward amendments to the *Parliamentary Service Act 1999* to express the intention of Parliament that the Parliamentary Budget Officer is entitled to free and timely access to all relevant information held by Executive agencies required to perform his or her functions, except where it is unlawful to do so.**

Contingency Reserve

- 4.59 As noted above, the *Parliamentary Service Act 1999* contemplates that some information can be provided to the PBO without being released to parliamentarians or the public. It appears that, in practice, much of the information provided to the PBO, especially in relation to models and calculations used for the preparation of budget estimates or the financial impact of budget measures is already provided on that basis.
- 4.60 The PBO also has measures in place to protect confidential or sensitive government information from unauthorised disclosure.
- 4.61 The committee is of the opinion that details of the individual components of the Contingency Reserve should be made available to the PBO subject to any requirement of non-disclosure to parliamentarians or the public considered necessary. This pro-disclosure approach is more consistent with the policy and intention of the Parliament in establishing the PBO, which already provides for the protection of Executive information.

Recommendation 3

- 4.62 **The committee recommends that the Government release details of the individual components of the Contingency Reserve to the Parliamentary Budget Officer, subject to any non-disclosure requirements considered necessary.**

Cost Barriers – Outsourcing and Third Party holdings

- 4.63 In some instances, the outsourcing of policy costing and/or the preparation of budget estimates has impeded PBO's access to information.⁵⁸ The Parliamentary Budget Officer identified five instances where access to information was not pursued due to the costs of accessing information held by a third party.⁵⁹ The third party might be a public sector agency, such as the Australian Government Actuary, or a private consultant.
- 4.64 The experience of the PBO to date is that third party providers charge the outsourcing agency with a 'significant additional fee' to provide information to PBO. Third parties have also been unwilling to provide the PBO, or the policy agency, with the model used to prepare the budget

58 PBO, *Submission 1*, p.14.

59 PBO, *Supplementary Submission 1.1*, p.1.

estimates or policy costings.⁶⁰ This has been the case, even where the third party is a government agency, namely the Australian Government Actuary, which is covered by the MoU.⁶¹

- 4.65 The PBO is not resourced to pay fees to third parties, and did not pursue Australian Government Actuary modelling due to the costs. In order to respond to requests from parliamentarians the PBO developed its own model and benchmarked it against official estimates. However, the PBO commented that this reduces the reliability of policy costings and increases the risk that PBO's costings will differ from official estimates.⁶²
- 4.66 The PBO also submitted that outsourcing budget estimates and policy costings can reduce the scope for PBO 'to work collaboratively with agencies in understanding the links between elements of the policy and its financial implications'.⁶³

Committee comment

- 4.67 The PBO is not resourced to pay fees to third parties, and, while it has found ways to respond to requests, the outsourcing of policy costing and budget estimates may significantly impact on PBO in the future.
- 4.68 The committee takes particular note of the situation with regard the Australian Government Actuary, which is covered by the MoU. Clause 5.4 of the MoU clearly states that no fees are payable by the Parliamentary Budget Officer or the PBO for the provision of, or access to, information under the MoU.
- 4.69 The committee supports the proposal by the PBO, that where agencies outsource the preparation of budget estimates and the costing of policy proposals, the terms of the contract should enable them to provide all relevant information, including the costing model to the PBO under the MoU without charge.

60 PBO, *Submission 1*, p.14.

61 The Australian Government Actuary is a 'fully self-funded unit' within The Treasury that provides a range of services, including modelling and assessment of long term financial liabilities and risks and analysis of Budget policy options. See <http://www.aga.gov.au/about/default.asp> accessed 7 October 2014.

62 PBO, *Submission 1*, p.14.

63 PBO, *Submission 1*, p.15.

Recommendation 4

4.70 The committee recommends the Government require that where a Commonwealth agency outsources the preparation of budget estimates and costing of policy proposals to a third party, the terms of the contract should enable the agency or the third party to provide all the relevant data, including the underlying calculations, models and methodology, to the Parliamentary Budget Officer under the MoU without charge.

Legislative barriers – prohibitions and discretions

4.71 The PBO submitted that there have been several instances where legislative provisions have either prevented or delayed the PBO's access to detailed (de-identified unit record) information and models.⁶⁴

4.72 These legislative provisions fall into three categories:

- prevents the agency from providing information to the PBO;
- requires an exercise of discretionary power by the agency to provide the information to the PBO; and
- legislation that has been amended to allow the agency to provide previously prohibited information to the PBO.

4.73 Where the release of the information requires the head of the agency to exercise a discretion the PBO's experience is that some agencies take a cautious and conservative approach. This has impacted on the timeliness of the release of data.

4.74 PBO suggested a conservative bias may stem from:

- a degree of ambiguity regarding whether the data can be released to PBO;
- the prospect of penalties and prosecution over the improper release of data; and/or
- concern that the PBO may not hold the data with the appropriate level of security.⁶⁵

4.75 The legislation that falls into this category is:

- *Paid Parental Leave Act 2010* (s.128(1));
- *Social Security (Administration) Act 1999* (s.208 (1));

64 PBO, *Submission 1*, p.15.

65 PBO, *Submission 1*, p.15.

- *A New Tax System (administration) Act 1999* (s.168(1));
 - *Student Assistance Act 1973* (s.355(1)); and
 - *Aged Care Act 1997* (s.86 (3)).
- 4.76 Provisions that prevent a Head of an Agency from releasing information to the PBO are:
- *Higher Education Support Act 2003* (s.180-10(1));
 - *National Health Act 1953* (s.135A);
 - *Dental Benefits Act 2008* (s.34(4),36(1));
 - *Private Health Insurance Act 2007* (s.321-1,s.323-20(1),(3)); and
 - *Health Insurance Act 1973* (s.130 (3A)).
- 4.77 There were amendments in 2013 to the *Taxation Administration Act 1953* to allow the PBO to access protected de-identified taxpayer information. The provision of de-identified tax unit record data was said to have enabled the PBO to:
- ... become more self-reliant, building modelling capacity to provide costings on a range of tax policy proposals. While the unit record data itself is not released by the PBO, used as an input to costing models it allows for more accurate and timely estimates of the financial implications of policy proposals.⁶⁶
- 4.78 In addition, following the exercise of administrative discretion of Agency Heads, the PBO also holds de-identified pension and child care data.
- 4.79 The PBO argued that removing legislative barriers to a broader range of de-identified unit record data would allow the PBO to extend its costing capacity though the development of more detailed and flexible models for government programs and payments.⁶⁷ However, the confidentiality and the protection of the privacy of individuals is a key concern when removing legislative barriers to PBO access to such data. On this point, PBO stressed that it holds de-identified data with 'appropriate security and confidentiality, including a secure IT network, physically secure offices (in addition to Parliament House perimeter security) and staff security clearances'.⁶⁸

66 PBO, *Submission 1*, p.15.

67 PBO, *Submission 1*, p.15.

68 PBO, *Submission 1*, p.16.

Committee comment

- 4.80 Legal barriers to the provision of information to PBO contained within specific statutes identified by the PBO should be amended to allow PBO access to de-identified unit data. This is an important piece of housekeeping to ensure there are no unintended barriers or limitations that undermine the PBO's capacity to build a self-reliant costing capacity.
- 4.81 The amendment to the *Tax Administration Act 1953* is a useful precedent. The committee also commends the Commonwealth's action in providing de-identified pension and child care data to PBO.
- 4.82 That said, individual privacy is a paramount consideration, and a Head of Agency is entitled to be satisfied that the PBO's arrangements to protect the security and confidentiality of sensitive data meets Commonwealth standards. It is also reasonable to consider what additional protection, if any, is required to provide assurance to Heads of Agencies that they are not at risk of prosecution for releasing such data to PBO. This might be especially applicable where an exercise of discretion is required.

Recommendation 5

- 4.83 **The committee recommends that the Government review Commonwealth statutes and remove legislative barriers to the release of information to the Parliamentary Budget Officer, including those identified in this report.**

Recommendation 6

- 4.84 **The committee recommends that where it is appropriate to retain an administrative discretion, the Government should consider making special provision for the release of data to the Parliamentary Budget Officer and, if necessary, any additional protection for the Commonwealth decision maker.**