

Submission to Joint Select Committee inquiry into the proposed Parliamentary Budget Office

Introduction

The *Parliamentary Budget Officer Act 2010* was passed by the NSW Parliament on 28 October 2010 and was assented to on 1 November 2010. The provisions of the Act regarding the appointment and remuneration of the Parliamentary Budget Officer commenced on the date of assent. The rest of the Act commences on 25 January 2011.

Recruitment action to appoint a Parliamentary Budget Officer commenced shortly after the legislation received assent. However, to date no appointment has been made. Concerns have been raised that the NSW Legislation is so restrictive in relation to the appointment process of the Parliamentary Budget Officer that there can be no temporary filling of the position until a suitable candidate is appointed. For example, provision could have been made to permit an officer to be seconded from the Audit Office or Treasury or for a person to be contracted from the private sector to act in the position for an interim period. While the legislation does provide for the appointment of an acting Parliamentary Budget Officer (section 8), such person must be a member of staff of the Parliamentary Budget Office so in effect this provision can only be used once the office has been established.

This submission addresses the terms of reference for the inquiry by setting out the relevant statutory provisions in New South Wales and where possible other relevant issues have been raised.

a) The appropriate mandate for the Parliament Budget Office (PBO)

In New South Wales, the PBO is established by the *Parliamentary Budget Officer Act 2010 (NSW)* (the Act).

The PBO's role is twofold: prior to an election it provides advice on the costing of election promises by parliamentary leaders and a budget impact statement of these costed policies (sections 18-22 and 23 to 25); at other times, at the request of any individual member of Parliament, the PBO may provide a costing of any proposed policy of that member and advice on any general economic, fiscal and financial matter (section 13). It is specifically prohibited from preparing advice for any parliamentary committee or from developing policy proposals for members (section 13(4)).

The legislation provides that a parliamentary leader may request the Parliamentary Budget Officer to prepare costings of publicly announced or proposed policies. It was amended by the Opposition in the Legislative Council to provide that only a party leader could request a costing of a policy and only in relation to the policies of their own party. Given the purpose of the PBO perhaps consideration should have been given to making it mandatory for a parliamentary leader to have any publicly announced policy costed and not just those policies that a costing is requested for.

During the debate on the legislation members of the Opposition raised a number of concerns about the lack of consultation about the proposed Office. In particular, concerns were raised that the legislation did not clearly set out what the mandate or charter of the Office would be but rather left the articulation of its role and its functions for the incoming Parliamentary Budget Officer. It was argued by the Opposition that the specifics of the functions of the Office should be subject to detailed consideration by the Parliament. Concerns were also raised about the cost of the Office given that the stated functions in the legislation related to the costing of election promises and whether a permanent office was required to do this. One member of the Opposition noted that it may have been a more sensible approach for an interim office to be established so that proper consideration and consultation on the role of a permanent Parliamentary Budget Office could be undertaken as has been done in the United Kingdom.¹

b) The nature of information needed to assist the Parliament in its consideration of matters related to the budget

As for the Australian Parliament, the New South Wales Budget Papers include expert financial and economic analysis of the State's performance and future spending plans. These are prepared by the Office of Financial Management.

In order to assist Parliament in its consideration of these matters, it is reasonable to suggest that it would be helpful for members to be able to seek advice from experts in economics, public sector finance, accounting, human resources and particular program areas.

c) The role and adequacy of current institutions and processes in providing this information, and the areas in which additional support is required

In New South Wales, the *Charter of Budget Honesty Act (Election Promises Act) 2006 No 89 (NSW)* enabled the Premier and Leader of the Opposition to seek costings and budget impact statements of individual policies from the Treasury within 60 days of an election. Individual members were not able to seek advice under this Act and in the agreement in principle speech for the PBO Bill, the Minister noted that this "was continually criticised by the Opposition and others due to a perceived, but non-existent, bias by Treasury towards the incumbent government."² The Parliamentary Budget Officer Act repealed the Charter of Budget Honesty Act.

Outside of election periods, there are limited opportunities for members to be provided with information on budgetary matters. The Parliamentary Library has a small number of researchers able to investigate matters of economic and financial analysis. Major parties are able to commission consultants from their own resources.

The Parliamentary Budget Office should provide an independent office to provide advice to all members of parliament on financial matters throughout the four year parliamentary term and in any pre-election period provide costings on policies to parliamentary leaders.

¹ NSW Parliamentary Debates, 19 October 2010.

² *Ibid.*

d) The scope for a PBO to fulfil its mandate in a cost-effective manner;

The Minister's agreement in principle speech for the bill included a government commitment to funding the PBO for the entirety of the first nine year term of appointment with up to \$4 million in capital and recurrent funding in its first year and up to \$3 million in subsequent years.³

In terms of performing its role in a cost effective way, section 14 of the Parliamentary Budget Officer Act requires the Officer to prepare an operational plan for the approval by both presiding officers. The Presiding Officers are required to table the approved operational plan in both Houses.

Accountability arrangements described in response to term of reference (e)(i) and (ii) should provide the means of ensuring the PBO performs its role in a cost effective way and establish a process for seeking more resources should the ones available prove insufficient.

e) Structure, resources and protocols

(i) Functions and lines of accountability and oversight

Section 5 provides for the position of Parliamentary Budget Officer as an independent officer of the Parliament. Such an officer is to be appointed by the Presiding Officers from a list prepared by a panel consisting of three senior independent public officials, the Ombudsman, the Information Commissioner and the Chair of the Independent Pricing and Regulatory Tribunal (section 6).

The first appointee is to be appointed for up to nine years (section 7(4)) and may only be removed from Office by the Presiding Officers on the grounds of misbehaviour, incapacity or incompetence. According to the Minister's agreement in principle speech these arrangements were proposed to ensure the independence of the position.⁴

Staff of the Parliamentary Budget Office are to be employed by the Presiding Officers. While they are under the joint control of the Presiding Officers, directions to such staff in relation to the exercise of the functions of the Parliamentary Budget Officer can only be given by the Parliamentary Budget Officer or another member of staff of the Parliamentary Budget Office authorised by the Parliamentary Budget Officer.

A conscious decision was made by the Executive to make the Parliamentary Budget Officer a separate entity within the Parliamentary establishment as opposed to making the position part of the Parliamentary Library or part of the Department of Parliamentary Services. In part this may be due to the experience of other jurisdictions such as in Canada where there has been some contention regarding the lines of reporting of the Parliamentary Budget Officer and the implications this has for the Officer's independence.⁵

³ *ibid.*

⁴ *ibid.*

⁵ See article in *Canadian Parliamentary Review*, Winter 2010.

While the Officer is part of the Parliamentary establishment in that they are required to report to the Presiding Officers, the Officer is aside from it, in that they are an independent officer and the staff of the PBO can only do work as directed by the Parliamentary Budget Officer. This unclear status raises questions about whether the Parliamentary Budget Officer and the PBO are covered by Parliamentary privilege and whether they are bound by or exempt from legislation in the same way that the other Departments of the Parliament are. On the other hand, if the PBO is to be considered an independent office should they be subject to annual reporting and auditing requirements in the same way as other independent statutory officers such as the Ombudsman.

The lines of reporting and accountability of the PBO, as specified in the Act, are to keep it at arms' length from the Executive. However, the review provisions in the Act provide for the Minister to review it after 5 years. Perhaps consideration should have been given to the review of the Act to be conducted by a Parliamentary Committee. For example, under section 15 of the Act the Presiding Officers designate a committee of each House to oversee the PBO. Such a committee would arguably be an appropriate body to conduct a review of the Act.

It is interesting that the legislation provides for the Presiding Officers to designate these committees as opposed to the House. It could be argued that in terms of ensuring the independence of the Officer that it may have been more appropriate for each House to designate the committees and that it may have been more efficient to have a joint committee of both Houses to oversee the PBO rather than 2 separate committees.

(ii) The routine work expected of the PBO and the minimum reporting requirements

As previously noted, under the legislation, the Parliamentary Budget Officer has a number of functions and each of these functions requires some reporting:

During a pre-election period the Officer is responsible for preparing election policy costings of publicly announced or proposed policies when requested by a parliamentary leader. The pre-election period commences on the day on which the last State budget before the election is presented to Parliament. In terms of reporting, the Parliamentary Budget Officer is required to provide the prepared costing to the leader who made the request and such leader may publicly release the costing. The Parliamentary Budget Officer is required under the Act to publicly release an election costing when the policy has been publicly announced.

The Parliamentary Budget Officer is also required to prepare, during the pre-election period, a separate budget impact statement for the respective policies of each parliamentary leader that have been costed. Such budget impact statements are to be publicly released by the Parliamentary Budget Officer prior to the election (section 23).

In relation to the routine work of election costings, section 25 of the Act allows for the Parliamentary Budget Officer to issue guidelines for the purposes of the making of election costing requests and the preparation of election policy costings and budget impact statements. Such guidelines should outline what members can expect from a costing and

what type of information and analysis will not be provided in a costing. Depending on the resources of the office it may be important for any guidelines about election costings to outline that no other requests can be made during the pre-election period other than those requests for election costings.

Other routine work of the PBO relates to preparing costing of proposed policies for members and providing analysis, advice or briefing of a technical nature on financial, fiscal and economic matters (section 13). There are no statutory provisions for such costings or advice to be publicly released. However, it may be appropriate for information on the number of requests made for such work and the types of requests to be noted in the Officer's annual report which is required to be furnished to both of the designated committees in accordance with section 15 of the Act.

The legislation is silent on whether the annual report should be tabled in both Houses or made publicly available. However, in the interest of transparency it may be appropriate for such reports to be tabled. If the PBO is considered to be part of the Parliament it is exempt from annual reporting requirements. However, the practice has been for the parliamentary departments to table their annual reports and to be consistent with the other parliamentary departments the Presiding Officers should table the Parliamentary Budget Officer's annual reports.

A further reporting mechanism in relation to the routine work that is expected of the PBO is through the Operational plan that is required to be approved and tabled by the Presiding Officers of each House. The operational plan will set out the objectives of the Parliamentary Budget Officer and will set out a schedule of the activities the Officer proposes to undertake. An operational plan will be prepared after each State general election (i.e. every four years). This operational plan should feed into any guidelines issued in accordance with section 25 noted above and should be a useful tool in ensuring that members are aware of the work that the PBO will be undertaking and what they can request information about.

(iii) The protocols for members of parliament requesting non-routine work of the PBO, including the types of work and the rules for prioritising and carrying out these requests

As noted, section 25 provides for the making of guidelines for the purposes of the making of election costing requests and the preparation of election policy costings and budget impact statements. While the Act is silent on other types of guidelines that can be made by the Parliamentary Budget Officer, protocols for dealing with requests from members for non-routine work could be specified in the operational plan or alternatively in an administrative document. The legislation does provide for the making of regulations so there is capacity for such protocols to be given statutory force if it is considered necessary.

Documenting what type of requests can be considered in addition to those specifically provided for in the legislation and the process for carrying out such requests should be a priority for the incoming Parliamentary Budget Officer to ensure that the PBO is seen to be above political interference. In making such protocols on what type and how requests of a

non-routine nature will be dealt with and prioritised it is important that all members are treated equally to prevent any inference of political bias.

(iv) The protocols around access to and disclosure of the PBO's work and any confidentiality requirements

Section 17 of the Act sets out a number of confidentiality requirements. It requires that the Parliamentary Budget Officer must not provide information and documents provided by a parliamentary leader or member for the purposes of an election costing to anyone other than that leader or member. The Parliamentary Budget Officer can supply such information and documents to a member of staff of the Parliamentary Budget Office. Penalty points apply under the legislation. There may be a need to have a code of conduct in place for staff of the PBO which sets out such confidentiality requirements. Protocols will also need to be in place in terms of the administrative arrangements in relation to document control systems to ensure the security of confidential documents.

In accordance with section 22(2) the Parliamentary Budget Officer is required to publicly release an election costing request and the costing when the parliamentary leader who requested the costing notifies the Officer that the policy has been publicly announced. There may be a need for protocols to be in place in terms of how the Officer is notified by party leaders about the public announcement of policies and a timeframe specified such as within 24 hours of the policy being publicly announced.

In addition section 22 (3) provides for the Parliamentary Budget Officer to issue a public statement to correct any misrepresentation of the election policy costing provided. There may be a need for protocols to be in place about how a misrepresentation will be dealt with. For example, it may be prudent for the Parliamentary Budget Officer to be required to contact the parliamentary leader about the misrepresentation prior to issuing a public statement in the interests of ensuring that parliamentary leaders do not end up in a war of words with the Officer through the media about any misrepresentation.

In accordance with section 23, the Parliamentary Budget Officer is to prepare a budget impact statement to each parliamentary leader which lists the relevant costed policies and show a summary of the assessed financial impact of each costed policy, and the total net financial impact of all the costed policies. Such statement is to be publicly released by the PBO prior to the general election together with the requests and the costings. The legislation provides for a review of a draft budget impact statement prior to its release by the relevant parliamentary leader and such leader has 48 hours to provide a final list of costed policies for inclusion in the statement. However, the legislation does not set out how any disagreements a parliamentary leader may have with the draft statement will be dealt with. Protocols may need to be in place to ensure that there is either a mechanism to allow for disagreements to be dealt with in a consistent manner or for parliamentary leaders to be advised that they can only list the policies costed and any other information in the statement cannot be amended.

(v) The protocols around the PBO's relationships with other institutions and processes, including government departments and agencies

Section 16 of the Act provides for the Parliamentary Budget Officer to make a request for information from the head of any Government agency to assist them in preparing a costing. A response must be received within 10 business days. The head of a Government agency must maintain the confidentiality of such requests for information.

Information does not have to be provided if there is an overriding public interest against the disclosure of the information in line with the *Government Information (Public Access) Act 2009* and the reason for not providing the information must be provided.

These provisions are in line with the access to Government Information legislation. While the non-disclosure of certain information on the basis of privacy or cabinet confidentiality are important there is a question as to whether the PBO should be entitled to any material required to effectively cost policies. In addition, if the PBO is considered to be part of the Parliament why is it restricted in the type of information it can access. Such issues will no doubt be considered as part of any review process and if the PBO is having difficulty obtaining adequate information to provide costings there is a capacity for amendments to be made to the legislation.

(vi) An appropriate level of staffing, appropriate qualifications for staff, and resources to allow the PBO to fulfil its mandate

The level of staffing and structure of the Office has not been specified in the Legislation. When the Minister for Finance introduced the legislation he commented: "It is envisaged that the office will require approximately 12 to 16 qualified and experienced economists, accountants and financial analysts covering the key spending areas and requisite support staff." The recurrent funding for the office has presumably been based on this estimation of resources.

The actual structure of the Office will be a matter for the incoming Parliamentary Budget Officer. Given that the pre-election period for the March General Election commences on 25 January 2011 there may be a need for consultants to be employed in the interim under section 11 of the Act in order for the work on election costings to be provided in a timely manner. This is due to the fact that the recruitment of permanent staff for the Parliamentary Budget Office is likely to take some time.