

CHAPTER 1

Introduction

1.1 On 10 October 2012, the Freedom of Information Amendment (Parliamentary Budget Office) Bill 2012 (Bill) was introduced into the House of Representatives by the Attorney-General, the Hon. Nicola Roxon MP.¹ On 11 October 2012, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 19 November 2012.² The House of Representatives passed the Bill on 30 October 2012,³ and the Bill was introduced into the Senate on the same day.⁴

Purpose of the Bill

1.2 The Parliamentary Budget Office (PBO) is established under the *Parliamentary Service Act 1999* as the fourth parliamentary department. The PBO is an important institution that further strengthens Australia's fiscal and budget frameworks by providing non-partisan and independent information to the Parliament on the budget, fiscal policy and financial implications of proposals. As set out in the Explanatory Memorandum (EM) to the Bill, the PBO is an exempt agency under the *Freedom of Information Act 1982* (FOI Act).⁵

1.3 However, the current exemption under the FOI Act is limited:

[T]he Freedom of Information Act does not currently provide a specific exemption for documents relating to requests from the Parliamentary Budget Office that may be held by departments and other agencies.⁶

1.4 The Bill addresses this issue by amending the FOI Act and the *Privacy Act 1988* (Privacy Act) to provide a new FOI exemption for documents related to confidential requests to the PBO. The exemption will apply to documents that are brought into existence for the 'dominant purpose' of providing information to the PBO in relation to a confidential request.⁷

1.5 The EM notes that 'this will ensure that the integrity of the PBO processes in these matters which are critical to the successful operation of the PBO will not be undermined'.⁸

1 *House of Representatives Votes and Proceedings*, No. 137, 10 October 2012, p. 1854.

2 *Journals of the Senate*, No. 117, 11 October 2012, pp 3117-3118.

3 *House of Representatives Votes and Proceedings*, No. 140, 30 October 2012, p. 1915.

4 *Journals of the Senate*, No. 119, 30 October 2012, pp 3191-3192.

5 Explanatory Memorandum (EM), p. 1.

6 The Hon. Nicola Roxon MP, Attorney-General, *House of Representatives Hansard*, 10 October 2012, p 11767.

7 Proposed new paragraph 45A(1)(b); (item 3 of Schedule 1 of the Bill).

8 EM, p. 1.

Key provisions of the Bill

1.6 As indicated in the EM, '[t]he Bill amends the FOI Act to provide an exemption for information held by departments and agencies that relates to a confidential request to the PBO' by a parliamentarian.⁹ The amendments will 'ensure that the integrity of the PBO processes in these matters which are critical to the successful operation of the PBO will not be undermined'.¹⁰

1.7 The key provisions of the Bill:

- amend the FOI Act by inserting a new section 45A to provide an exemption for information held by departments and agencies that relates to a confidential request to the Parliamentary Budget Office;¹¹
- amend section 25 of the FOI Act to provide that an agency is not required to give information as to the existence or non-existence of a document, where it is exempt under the new exemption for documents that relate to a confidential request to the PBO;¹²
- amend subsection 58B(1) of the FOI Act to provide that, where an application is made to the Administrative Appeals Tribunal (AAT) for a review of a decision refusing to grant access to a document that is claimed to be exempt under the new PBO exemption, the AAT must be constituted by three presidential members or by a presidential member alone.¹³

1.8 The Bill also makes a consequential amendment to the Privacy Act, to reflect the amendment to section 25 the FOI Act. The Attorney-General noted that section 34 of the Privacy Act provides that the Information Commissioner, in carrying out functions under the Privacy Act such as investigating a possible breach of privacy by an agency, must not give a person any information as to the existence or non-existence of a document where it is exempt under the FOI Act.

1.9 The Attorney-General went on to state:

It is proposed to amend section 34 [of the Privacy Act] to refer to the new Parliamentary Budget Office exemption, reflecting the amendment to section 25 of the Freedom of Information Act and ensuring that Parliamentary Budget Office documents are confidential.¹⁴

9 EM, p. 2.

10 EM, p. 2.

11 EM, p. 6.

12 EM, p. 6.

13 EM, p. 8.

14 The Hon. Nicola Roxon MP, Attorney-General, *House of Representatives Hansard*, 10 October 2012, p. 11767.

Conduct of the inquiry

1.10 The committee advertised the inquiry in *The Australian* on 24 October 2012, and details of the inquiry, the Bill and associated documents were placed on the committee's website at http://www.aph.gov.au/senate_legalcon. The committee also wrote to over 50 organisations and individuals, inviting submissions by 26 October 2012.

1.11 The committee received four submissions, which are listed at Appendix 1. No public hearings were held for the inquiry.

