

2012

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE REPORT BY THE SELECT COMMITTEE
ON THE ELECTION COMMITMENTS COSTING BILL 2011 EXPOSURE
DRAFT**

**INQUIRY INTO ELECTION COMMITMENTS COSTING BILL 2011
EXPOSURE DRAFT**

**Presented by
Mr Andrew Barr MLA
Treasurer**

Tabled on 14 August 2012

Introduction

The Select Committee on the Election Commitments Costing Bill 2011 Exposure Draft - *Inquiry into Election Commitments Costing Bill 2011 Exposure Draft* presented its report to the Legislative Assembly on Thursday, 7 June 2012.

The Government thanks the Committee for its Report. The Committee provided a report with 12 recommendations.

General Comments

The Government advocates the introduction of legislation to formalise the election commitments costing process in the Territory and welcomes the review of the *Election Commitments Costing Bill 2011 Exposure Draft* and the supporting Guidelines.

While public servants serve the Government of the day during the ordinary business of government, the period before an election of the Legislative Assembly presents unique challenges when other parties have access to Treasury for costing purposes. The purpose of this proposed legislation is to ensure that during an election process, Treasury and political parties have a shared understanding of the roles and responsibilities of each body and will allow Treasury to operate with a clearer degree of certainty during the election process.

In considering the recommendations of the Committee, it was also necessary to properly balance the legitimate rights of a Government, the role of the Public Service to serve the Government of the day, as well as the ability for individuals to meet the obligations imposed by the proposed Bill.

The recommended period for when a costing request can be made includes both a pre-caretaker period, from the day following the last sitting day of the Legislative Assembly in an election year to the beginning of the caretaker period, as well as the caretaker period.

During the pre-caretaker period the Government continues to undertake normal Government business and the Public Service has the responsibility to serve the Government of the day through this period. Undertaking costings in the pre-caretaker period is administratively more challenging. Economic parameters are one of the factors used when calculating costings. The economic parameters being used for the pre-election budget update (PEBU) will not be known on the day after the last sitting day of the Legislative Assembly before the election. Therefore any costings undertaken before the release of PEBU would have to be amended once the updated parameters are known.

The Government considers a more practical and efficient commencement date is the beginning of the caretaker period. This better aligns with the issue of PEBU and the parameter updates. For the above reasons the Government only partially agrees with Recommendation 2.

One of the recommendations of the Committee (recommendation 11) is that there be no public acknowledgement of a costing request. This recommendation, together with recommendation 10 that the Public Service must not disclose any information

in relation to a costing request to the Treasurer or any Minister of the Government of the day, creates potential implementation difficulties.

During the caretaker period the Government can continue to ask the Public Service to provide factual information. The Public Service still has the responsibility to serve the Government of the day through this period, including providing factual information in accordance with the Caretaker Conventions and providing information to the Government on how resources of the Public Services are being utilised.

There are circumstances when the Government of the day might ask the Public Service for factual information that may be similar to a request made for an election commitment costing by another political party. If the Government is unaware that a costing request has been made, it is unable to take into consideration the non-disclosure requirements of the costings legislation when requesting information.

Further, a Director General in these circumstances will have to decide how to respond to the request while still complying with the non-disclosure requirement. If costing requests are not allowed to be publicly acknowledged, this places the Director General in a difficult position in deciding how to respond to the Government if a request must be refused but no explanation can be provided.

If there is no public acknowledgement of a costing request, there is also some risk that a public servant may inadvertently provide information to a Minister that may be similar to a costing request, because they were not aware of the request made by an MLA. Although the public servant has acted in good faith his professionalism and ethical behaviour maybe unfairly questioned.

In view of the above, while the Government acknowledges the principle of the Committee's recommendation that there be no public acknowledgement of a costing request, the Government does not agree with recommendation 11 due to the above practical difficulties that would result. If costings are acknowledged then the concerns associated with the non-disclosure recommendation (recommendation 10) could be ameliorated through robust internal processes.

The Government's response to each specific recommendation is as follows:

Recommendation 1

That the Government provide a manual of standard costings, and a briefing to all Members of the Legislative Assembly, as soon as practicable after the enactment of the Draft Bill.

Government Response

Agree.

While Treasury does not have a manual of standard costings, it will provide all information required to fully inform Members of the Legislative Assembly on the costing process, including economic parameters and other assumptions.

Recommendation 2

The Committee recommends that clause 5 of the Exposure Draft Bill be amended to provide that the pre-election period to which the Bill will apply be from the day following the last sitting day of the Legislative Assembly in an election year until the formation of the new government.

Government Response

Partially agree.

As noted in the General Comments, allowing costing requests to be made from the day following the last sitting day of the Legislative Assembly in an election year is administratively difficult and the Government does not agree with this part of the recommendation.

However the Bill has been amended to allow for costing requests to be submitted up until the formation of a new government.

To ensure that only costings required to be completed on or after polling day are performed, the Bill separates the costing requirements into two periods of time. The first period will be from the commencement of the caretaker period up until the end of the day before polling day (clause 5(1)). The second period will commence on polling day and end when the Chief Minister is elected on the first sitting day after the election (clause 5(2)). The total period will be known in the Bill as the "costing period".

This recognises that after polling day, costings requested to be undertaken would be to assist parties negotiating to form Government rather than informing voters prior to polling day. Under the Bill the requestor of a costing on or after polling day can be the leader of a registered party with one or more MLAs before polling day or another person nominated by the party (clause 5(2)).

Recommendation 3

The Committee recommends that the Draft Guidelines be considered and thoroughly reviewed, following the consideration of the Committee's report.

Government Response

Agree.

The Guidelines have been reviewed and amended as necessary.

Recommendation 4

The Committee recommends that clause 9 of the Bill be amended, to make election commitment costings exempt from Freedom of Information legislation and, for clarity and certainty this material is not to be released either at the direction of the Government or under any other process until such time as the new Government is formed.

Government Response

Agree.

The Bill includes a clause (clause 12) that exempts a document in relation to a costing request from the Freedom of Information legislation. This clause will only apply in the costing period.

Recommendation 5

The Committee recommends that clause 10 of the Draft Bill be amended to provide for the pre-election costing period to be extended from polling day until the new Government is formed.

Government Response

Agree.

The Bill has been amended to separate the costing requirements into two periods of time. The first period will be from the commencement of the caretaker period up until the end of the day before polling day (clause 9). The second period will commence on polling day and end when the Chief Minister is elected on the first sitting day after the election (clause 10).

If Treasury does not have sufficient information or has not had sufficient time to prepare a policy costing and publicly release a request prior to polling day, the request will be taken to be withdrawn before polling day (clause 9(5)). The Bill requires Treasury to publicly release a statement to that effect before polling day (clause 9(4)).

In addition clause 9(6) means the Public Service is not under any obligation to continue with a costing request on or after polling day that was requested before polling day. This ensures the efficient use of Public Service resources. Should a requestor still require a policy to be costed after polling day, the request will have to be formally re-submitted on or after polling day.

If Treasury does not have sufficient information or has not had sufficient time to prepare a policy costing and publicly release a request by the first sitting day of the Assembly after the election, the request will be taken to be withdrawn (clause 10(5)). The Bill will also require Treasury to publicly release a statement to that effect (clause 10(4)).

Recommendation 6

The Committee recommends that clause 11 of the Bill not be proceeded with.

Government Response

Agree.

The clause allowing the Minister to determine fees has been removed from the Bill.

Recommendation 7

The Committee recommends that clause 13 of the Exposure Draft Bill be amended so as to provide for a review by the Minister of the operation of the election commitments costing scheme provided for in the legislation after the 2012 general election, and that the report of the review be tabled in the Legislative Assembly by the last sitting day in October 2013.

Government Response

Agree.

The Bill includes a clause to this effect (clause 14).

Recommendation 8

The Committee recommends that the provision on page 5 in the Draft Guidelines which reads:

This does not preclude the government of the day requesting factual material of a potential election commitment as part of the ordinary business of serving the Government. If the Treasury provides the Government factual material as part of the ordinary business of Government, the provisions of the Act will not apply be deleted from the Draft Guidelines.

Government Response

Agree.

However as noted in the General Comments, removal of this paragraph will not prevent the Government from acting within its rights under the Caretaker Conventions. Under the Caretaker Conventions the public service will continue to provide factual information to the Government of the day.

Recommendation 9

The Committee recommends the Exposure Draft Bill should be amended to insert a new clause stating:

Unless the requestor of the costing, a Minister must not request information from the Under Treasurer or any official, public servant or directorate officer regarding any work performed under this Act.

Government Response

Agree in principle.

Clause 5(5) in conjunction with Clause 11(1) gives affect to this recommendation and ensures that only the requestor obtains costing information about their costing request. Therefore no specific clause is required.

Note that the non-disclosure requirement of clause 11(1) only applies from the beginning of the caretaker period up until the first sitting day of the Assembly after the election. This is consistent with the timing of recommendation 4 relating to Freedom of Information requests.

Recommendation 10

The Committee recommends that the Exposure Draft Bill be amended so as to prohibit any officer from informing the Treasurer or any Minister of the Government of the day of a request for costing or details of any such request unless the Minister is the requestor of the costing.

Government Response

Agree.

Clause 11 (1) of the Bill provides that from the beginning of the caretaker period until the first sitting day of the Assembly after the election, costing information particular to a costing request must not be disclosed to anyone other than the person who made the request, unless permitted under the Bill.

Treasury will implement procedures and guidelines to assist public servants in complying with this clause. In particular, Treasury will clearly specify when requesting costing work be undertaken, whether the work pertains to a costing request under the Bill or normal government business.

Recommendation 11

The Committee recommends that the provisions relating to public acknowledgment of costing requests in the Draft Guidelines be deleted.

Government Response

Disagree.

As noted in the General Comments, the removal of any public acknowledgement of a costing request would impact on the Public Service's ability to undertake their work and meet their obligations under clause 11 of the Bill.

To ensure that the non-disclosure requirements of clause 11 do not preclude the ability for requests to be acknowledged, the Bill has been amended to include clause 5(4) requiring the public acknowledgement of election commitment costing requests.

Recommendation 12

The Committee recommends that Part 4 of the Draft Guidelines relating to the process followed in the public release of costings and the delivery of costing reports be amended to increase the time period between an email notification that an election commitment costing is to be publicly released, and release of the costing, from a period of at least 3 hours to a period of at least 24 hours.

Government Response

Agree.

To provide requestors an assurance that the costing will be provided to them prior to public release, clauses 9(3) and clause 10(3) have been inserted into the Bill, with the time period being then specified in the Guidelines. The Guidelines have been changed to allow the requestor at least 24 hours to review the costing prior to it being publicly released.

As a result of this extension of time to requestors prior to public release of the costing, clause 6(1) has been amended to allow a requestor to withdraw a costing request, up until the time a copy of the costing is provided to the requestor.

As outlined in the Guidelines, the provision of the costing to the requestor is to allow the requestor time to review the assumptions made by Treasury and to understand the impact it has on their election commitment. The increase in time from three to twenty-four hours prior to the costing being publicly released could potentially be seen as an opportunity to withdraw a costing request, based on the information contained in the costing. The amendment to the withdrawal clause clarifies that this time period is not to be seen as a period in which a requestor can withdraw a request.