

INQUIRY INTO THE LEGISLATIVE ASSEMBLY
(PARLIAMENTARY BUDGET OFFICER) BILL 2016

SELECT COMMITTEE ON THE LEGISLATIVE ASSEMBLY (PARLIAMENTARY
BUDGET OFFICER) BILL 2016

AUGUST 2016

REPORT

COMMITTEE MEMBERSHIP

Mr Shane Rattenbury MLA (Chair)

Mr Andrew Barr MLA (Deputy Chair)

Mr Brendan Smyth MLA (to 15 July 2016)

Mr Alistair Coe MLA (from 15 July 2016)

SECRETARIAT

Mr Andrew Snedden Secretary

Ms Lydia Chung Administrative Assistant

CONTACT INFORMATION

Telephone	02 6205 0199
Post	GPO Box 1020, CANBERRA ACT 2601
Email	committees@parliament.act.gov.au
Website	www.parliament.act.gov.au

RESOLUTION OF APPOINTMENT

At its meeting on Wednesday, 8 June 2016, the Assembly passed the following resolution:

"That:

1. a select committee on the Legislative Assembly (Parliamentary Budget Officer) Bill 2016 be established to inquire and report on the Bill and any other related matter;
2. the Committee be comprised of Mr Barr (Treasurer), Mr Rattenbury and Mr Smyth;
3. Mr Rattenbury will chair the Committee;
4. the Committee report to the Assembly by 2 August 2016; and
5. If the Assembly is not sitting when the Committee has completed its inquiry, it may send the report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation."

On 15 July 2016, Mr Smyth MLA resigned as a Member of the Legislative Assembly creating a vacancy on the Committee. On that date, Mr Coe MLA was appointed to the Committee by the Speaker under Standing Order 223.

GLOSSARY

The ACT PBO Bill	The Legislative Assembly (Parliamentary Officer) Bill 2016 presented to the ACT Legislative Assembly on 4 May 2016 by Mr Brendan Smyth MLA
Explanatory Statement	Explanatory statement issued with the ACT PBO Bill
Commonwealth PBO	The Parliamentary Budget Officer established pursuant to the <i>Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2011</i> (Cwlth)
NSW PBO	The Parliamentary Budget Officer for NSW established and appointed pursuant to the <i>Parliamentary Budget Officer Act 2010</i> (NSW)
Victorian PBO	The Parliamentary Budget Officer for Victoria proposed by the Parliamentary Budget Officer Bill 2016 (Vic)
Election period	(Pursuant to the ACT Electoral Act 1992) in relation to an election, means the period— (a) beginning on the first day of the pre-election period; and (b) ending when the result of the election is declared
Caretaker period	(Pursuant to the ACT Electoral Act 1992) means the period of 37 days ending on the polling day for an election.
Registered party	(Pursuant to the ACT Electoral Act 1992) means a political party registered under part 7 of the Act - (Registration of political parties).

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RECOMMENDATIONS

RECOMMENDATION 1

- 3.9 The Committee recommends that the Legislative Assembly (Parliamentary Budget Officer) Bill 2016 not be further considered by the Eighth Assembly, and that the Bill be scheduled for consideration by an appropriate committee of the Ninth Assembly in a manner that the Ninth Assembly may decide is appropriate following the formation of the Ninth Assembly.**

1 INTRODUCTION AND CONDUCT OF INQUIRY

REFERRAL OF THE LEGISLATIVE ASSEMBLY (PARLIAMENTARY BUDGET OFFICER) BILL 2016 TO THE COMMITTEE

- 1.1 On 4 May 2016, Mr Smyth MLA, presented the following papers in the Legislative Assembly:
- Legislative Assembly (Parliamentary Budget Officer) Bill 2016
 - Explanatory statement
- 1.2 At the time of presentation of the Legislative Assembly 9Parliamentary Budget Officer) Bill (the PBO Bill) Mr Smyth MLA made a presentation statement on the Bill. The Bill, the explanatory statement and the presentation statement made by Mr Smyth are in **Appendices A, B and C** respectively.
- 1.3 In his presentation statement, Mr Smyth provided the Assembly with details of the proposed ACT Parliamentary Budget Officer (PBO). Mr Smyth noted that:

What this bill would do is give access to a fully independent policy costing unit separate from the Treasury directorate. That independent body would be called the parliamentary budget officer. The bill to establish the parliamentary budget officer ensures that all members get support on a level playing field. The public accounts committee, for instance, would have access to those services, as would any of the committees.

This goes beyond individuals or parties. It is actually designed to be of assistance and an aid to all of us in whatever facet of our activities we undertake here, particularly for something like the estimates committee. I think that last year the estimates committee spent something like \$30,000 on getting assistance, on getting the analysis to undertake more detailed work so that the estimates committee could do its job properly. So I think that in terms of the evolution, this is certainly where we are heading. The question, I guess, for members will be: do they think this is the right time? Something exciting might happen in about 165 days from now. I think this is the perfect time to set this up and to have it ready for the upcoming election.

In terms of support functions for all members, the PBO would provide policy costings on a request by a member of the Assembly. During the pre-election period it would provide policy costings on request by an authorised member of a parliamentary party or an independent member of the Legislative Assembly. It would provide members with support on, for instance, analysing the budget papers. It would provide support to any of

the committees, whether standing or select, to assist them in their functions. It could also undertake general research and analysis of budget papers and financial policy settings.

What the bill proposes is that the PBO become an officer of the Assembly to guarantee that independence. The bill has in it a range of safeguards to ensure a robust appointment process and, if necessary, a dismissal process for inappropriate behaviour. In particular, it provides for protection of confidential information so that the PBO can go to Treasury or various departments to request information about particular services, and that request must remain inside the appropriate service.

We are approaching a period where the services of a PBO would deliver maximum value. I believe that it would be appropriate to pass this bill in June which, of course, would be the budget sitting itself. I do not expect that the PBO would cost a great deal. One of the provisions of the bill is that the PBO would be appointed for a period of up to four years. In effect, you could have a PBO for a whole term. You could find somebody who gets experience at looking at the four budgets that lead up to the next election. That would be useful in terms of continuity. The act provides for the PBO to be appointed for potentially up to two terms.¹

- 1.4 The PBO Bill, Explanatory Statement and the Draft Guidelines were referred to the Select Committee for examination and report by 2 August 2016.

TERMS OF REFERENCE

- 1.5 The Terms of Reference which were passed by the Legislative Assembly appear at the start of this report.

SUBMISSIONS

- 1.6 The Committee called for submissions by placing a notice on the Legislative Assembly's website, and by advertising for submissions in *The Canberra Times* on 14 June 2016.
- 1.7 The Committee received two written submissions as follows:
- ACT Government (submission 1)
 - Mr Stephen Bartos (submission 2)

¹ ACT Legislative Assembly, Hansard, 4 May 2016, pp 1448-1450.

- 1.8 To ensure this report provides complete information for the Assembly, these submissions appear in **Appendix D**.
- 1.9 The Committee has conducted its inquiry by undertaking some preliminary analysis of the processes that have been followed in the operation of the two principal PBOs in Australia: the Commonwealth PBO established in 2011 and the NSW PBO established in 2010. The Committee has also given preliminary consideration to the provisions of the Victorian Parliamentary Budget Officer Bill 2016; yet to receive final consideration by the Parliament of Victoria.
- 1.10 As part of this brief analysis, the Committee considered the various annual reports from the Commonwealth PBO and the 2015 report from the NSW PBO, as both relate to matters raised by the Bill, including pre-election commitment costing.
- 1.11 In addition, the Committee held discussions with the 2015 NSW PBO, Mr Stephen Bartos, who provided the Committee with the benefit of an analysis of the operations of one model of a PBO; that is, a PBO which is established for the period of a general election, but which does not have a role outside that election period.
- 1.12 The Committee invited a discussion with the current Commonwealth PBO, but was unable to arrange that discussion due to the imminent Federal general election, and the PBO's commitments to the Offices' role in pre-election commitment costings and the preparation of a post-election report on the PBO's operations during the election period.

REPORT STRUCTURE

- 1.13 **Chapter 2** outlines briefly the background to PBOs in Australia as at 2016 and outlines the results of reports from the Commonwealth and NSW PBOs to Parliament since their respective establishment.
- 1.14 **Chapter 3** provides some comment directed at the Bill and how the Committee considers this piece of legislation can be profitably and constructively dealt with by the Assembly at this time.
- 1.15 **Chapter 4** acknowledges assistance and contributions made to the Committee's inquiry.

2 ROLE OF AUSTRALIAN PARLIAMENTARY BUDGET OFFICERS - 2016

COMMONWEALTH AND NSW

- 2.1 Systematic and formal approaches to the establishment, powers and operations of PBOs in the Australian Parliamentary structure were the subject of public debate leading to the establishment of two PBOs in 2010 (NSW) and 2011 (Commonwealth)..
- 2.2 Under amendments to the *Parliamentary Service Act 1999* (Cwlth) contained in the *Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2011* (Cwlth), the costing of budget, policy and pre-election commitments at the Commonwealth level is carried out by the Commonwealth PBO.
- 2.3 The Commonwealth PBO has presented annual reports to the Parliament since 2011 on the range of activities conducted by that Office and the performance against statutory requirements as specified in the establishing legislation.
- 2.4 The PBO in NSW, by contrast, and with differing means and practices to the Commonwealth PBO has discharged responsibilities and functions under the NSW PBO Act 2010 and reports to the NSW Parliament after each general election. In addition, the NSW PBO has its report assessed and analysed by the Public Accounts Committee of the NSW Legislative Assembly following its tabling in the NSW Parliament.

REPORTS - COMMONWEALTH AND NSW PBOs

- 2.5 Annual reports from the Commonwealth PBO have provided detail and information on the discharge of the PBO's role in all aspects of the Office's role.
- 2.6 The reports from the Commonwealth PBO comprise, in the case of the 2013-14 report, details of costings sought, costing process and activities and outcomes for inclusion in the PBO post-election report (a special report).
- 2.7 The Committee notes this report as a model for a PBO of the Commonwealth's wide role and responsibilities.
- 2.8 The Post-election Report from the NSW PBO differs considerably to the Commonwealth PBO due to the difference in the roles and functions of the two offices.

2.9 The 2015 PBO report notes that:

The 2015 NSW election was the first time in Australian history both Government and opposition parties have used a Parliamentary Budget Office to cost their election policies and have their total impact published in a budget impact statement.²

2.10 The Report contains a detailed account of all aspects of the NSW PBOs activities and performance during the election period, and provides a number of recommendations for the possible improvement and possible amendment of the PBO legislation and other matters. It is noted that these recommendations are referred to the Public Accounts Committee of the NSW Parliament – and the NSW Parliament - for consideration and action. In the case of the 2015 report from the NSW PBO that report was considered and the PAC response and report to the Legislative Assembly was tabled in October 2015.³

DISCUSSIONS WITH MR STEPHEN BARTOS

2.11 As noted, the Committee had the benefit of a discussion with Mr Stephen Bartos, the NSW PBO for the 2015 election period. The Committee was provided with some valuable analysis and comment by Mr Bartos on the working of the NSW model PBO, and the essential features of a successful PBO, given his experience in NSW as the 2014-15 PBO.⁴

2.12 The key issues that Mr Bartos identified for the Committee included⁵:

- The matter of primary and central importance in a PBO model is that be an Officer of the Parliament.
- The NSW PBO model can be seen as a pragmatic response to the requirements of a PBO which does not have a continuing policy and budget costing role (as is the case with the Commonwealth PBO). In this context, the current ACT Bill may need to address the model it currently proposes, as the NSW experience has been very positive in providing for a PBO of specific existence each election period.
- A strength of the NSW PBO experience in 2014-15 was the effectiveness and flexibility of having parliamentary committee staff seconded to the PBO, along with specialist policy area secondees from major agencies and departments. This relationship with the Parliamentary Committee office, and the relevant Treasury/Finance Committee of the

² See, *NSW Parliament, Parliamentary Budget Office. 2015 Post-election Report*, 11 June 2015, p. 1.

³ See *NSW Parliament, Public Accounts Committee, Report on the Parliamentary Budget Office 2015 Post-election Report*, Report1/56 – October 2015.

⁴ Due to illness, Mr Smyth was unable to attend the discussion with Mr Bartos. Mr Barr and Mr Rattenbury attended the discussion.

⁵ Note: The Committee has also drawn on the 2015 post-election report by the NSW PBO to provide some detail in this list of matters discussed with Mr Bartos. – See <https://www.parliament.nsw.gov.au/pbo/Documents/PBOdocumentlibrary/Post-election%20Report%20-%20Final.pdf>

NSW Parliament was of great assistance to the PBO and to the Parliament's confidence in the PBO process.

- Confidentiality of information and costings requests provided to the PBO is an essential element in the confidence and support the NSW PBO experienced. Costing applications are not available through Freedom of Information process, and must remain confidential to allow for frank costing advice and for parties to have that ability to withdraw applications if costing advice warrants such a course
- An independent PBO is essential. The choice of a PBO in NSW is assisted to some extent by the guarantee that the fixed-term arrangement ensures that a PBO is not considered to be a career executive or ongoing appointment and can, as a result, exercise considerable independence.
- A post-election reporting arrangement – as provided for in NSW – is desirable; the PBO reports to the Parliament and the Public Accounts Committee which then provides a response to the PBO's report and any recommendations for the future. It is noteworthy that the NSW PBO made a number of detailed recommendations for the future operation of the NSW PBO legislation and the PBO office
- An important element in NSW PBO functions is the election year Budget report prepared for the Leaders of the Government and the Opposition and which are provided to them 15 days prior to the election date (a fixed date, as in the ACT). This process allows maximum opportunity for more informed preparation of policies before publication of costings by the PBO, and ensures that eventual publication of PBO costings on its website is of maximum benefit to the community.
- Relationships with the PBO stakeholders, including parliamentary leaders, and their nominees, heads of government agencies and their staff and the Parliament's Presiding Officers, and staff of the parliamentary departments and committees is a high priority for the NSW PBO, and should be generally for parliamentary budget and costings officers.
- The growth of parliamentary budget and costings officers generally, as evidenced by the OECD information and analysis base on such offices from a range of jurisdictions, suggest that the model is established as a principal means of the legislature's scrutiny of budget and election commitment costing.⁶

ACT ELECTION COMMITMENT COSTING ACT 2012

2.13 The ACT has legislation governing the activities of the ACT Treasury and costing mechanisms pursuant to the Election Commitment Costing Act 2012. The ACT Treasury Directorate costed election commitments in accordance with the Act in the 2012 ACT election.

⁶See, Organisation of Economic Cooperation and Development, *The role of Independent Fiscal Institutions*, June 2011. <https://www.oecd.org/gov/budgeting/48141323.pdf>

- 2.14 The 2012 Act was considered and reported on before its enactment - with recommendations for some changes – by a Select Committee of the Assembly in 2012. The Committee considered the principal elements of the scheme for election commitment costing provided by the Exposure Draft of the Bill for the Election Commitment Costing Act including the process of referring election commitments for costing during an election period, the method by which the costings are carried out and the agency which conducts and scrutinises the costings.
- 2.15 In the course of this brief inquiry, the Committee did not consider the experiences of the ACT election costing regime in the context of the PBO Bill.

3 FURTHER CONSIDERATION OF THE LEGISLATIVE ASSEMBLY (PARLIAMENTARY BUDGET OFFICER) BILL 2016

INTRODUCTION

- 3.1 The structure of the PBO Bill has not been examined as envisioned by the reference of the Bill as the Committee has not had the opportunity to examine and consider the Bill in detail. Illness, and the resignation of Mr Smyth, meant that the Committee was not able to fully scrutinise the Bill. Equally, the proximity of the last sitting week and the 2016 election did not, in the Committee's view, allow time for the implementation of a PBO for the 2016 ACT election.
- 3.2 As noted earlier in this report, the Committee received two submissions on the PBO Bill: one from the ACT Government and a second from Mr Stephen Bartos. As noted, these submissions are reproduced in **Appendix D**.
- 3.3 The Committee has not undertaken an analysis of the submissions or made any decision on how the observations in the submissions, particularly those from Mr Bartos, may be implemented or how the arguments relevant to the proposal for a PBO structure in the Bill might be applied in the ACT jurisdiction.
- 3.4 As the ACT PBO is proposed by the Bill to be an officer of the ACT Legislative Assembly (as are the Commonwealth PBO and NSW PBO Officers of the Commonwealth and NSW Parliaments respectively) the Committee has, given the time and the limitations on its inquiry process, reached the conclusion that it is important that the Assembly not proceed with the further and more detailed examination of the Bill in the very limited Assembly time available in August 2016, and in a pre-election period following that sitting period.

COMMITTEE OBSERVATION AND COMMENT

- 3.5 In this report, the Committee draws the attention of the Assembly to a number of matters including developed - and developing – models and performance by the Commonwealth and NSW PBOs which, the Committee strongly believes, should be carefully considered and further explored in examining the Legislative Assembly (Parliamentary Budget Officer Bill) 2016.
- 3.6 In this context, the Committee notes that the models of PBOs differ from each other, with a new model provided in the Bill currently before the Victorian Parliament.

- 3.7 The Committee draws attention to that Bill, and is of the view it should form part of further examination of the ACT PBO Bill.
- 3.8 Without making comment on the individual provisions of the ACT PBO Bill, the Committee considers that the Bill should not be dealt with by the Legislative Assembly at this time, but considers it is important that the Bill be brought before the next Assembly for a more detailed and comprehensive assessment.

Recommendation 1

- 3.9 The Committee recommends that the Legislative Assembly (Parliamentary Budget Officer) Bill 2016 not be further considered by the Eighth Assembly, and that the Bill be scheduled for consideration by an appropriate committee of the Ninth Assembly in a manner that the Ninth Assembly may decide is appropriate following the formation of the Ninth Assembly.**

4 CONCLUSION

- 4.1 The Committee wishes to thank the ACT Government and Mr Stephen Bartos for their contribution to its inquiry, which provided valuable views and suggestions on the Bill.
- 4.2 The Committee has made one recommendations in relation to its inquiry into the Legislative Assembly (Parliamentary Budget Officer) Bill 2016.

Shane Rattenbury

Chair

August 2016

Appendix A **LEGISLATIVE ASSEMBLY (PARLIAMENTARY BUDGET
OFFICER) BILL 2016**

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Brendan Smyth)

Legislative Assembly (Parliamentary Budget Officer) Bill 2016

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2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Brendan Smyth)

Legislative Assembly (Parliamentary Budget Officer) Bill 2016

A Bill for

An Act to provide for a parliamentary budget officer, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

Section 1

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Legislative Assembly (Parliamentary Budget Officer)*
4 *Act 2016*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 **3 Dictionary**

10 The dictionary at the end of this Act is part of this Act.

11 *Note 1* The dictionary at the end of this Act defines certain terms used in this
12 Act, and includes references (*signpost definitions*) to other terms
13 defined elsewhere.

14 For example, the signpost definition '*pre-election period*—see the
15 [Electoral Act 1992](#), dictionary.' means that the term 'pre-election
16 period' is defined in that dictionary and the definition applies to this
17 Act.

18 *Note 2* A definition in the dictionary (including a signpost definition) applies to
19 the entire Act unless the definition, or another provision of the Act,
20 provides otherwise or the contrary intention otherwise appears (see
21 [Legislation Act](#), s 155 and s 156 (1)).

22 **4 Notes**

23 A note included in this Act is explanatory and is not part of this Act.

24 *Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of
25 notes.

1 **5 Object of Act**

2 The object of this Act is to establish a parliamentary budget officer
3 to inform the Legislative Assembly by providing independent,
4 non-partisan analysis of the budget cycle, fiscal policy and the
5 financial implications of proposals made by members of the
6 Legislative Assembly.

Part 2	Parliamentary budget officer
Division 2.1	Establishment and independence of parliamentary budget officer
Section 6	

- 1 **Part 2** **Parliamentary budget officer**
- 2 **Division 2.1** **Establishment and independence of**
- 3 **parliamentary budget officer**
- 4 **6** **Parliamentary budget officer**
- 5 There must be a parliamentary budget officer for the Territory.
- 6 **7** **Officer of the Legislative Assembly**
- 7 (1) The parliamentary budget officer is an independent officer of the
- 8 Legislative Assembly.
- 9 (2) The functions, powers, rights, immunities and obligations of the
- 10 parliamentary budget officer are as stated in this Act and other
- 11 territory laws.
- 12 (3) There are no implied functions, powers, rights, immunities or
- 13 obligations arising from the parliamentary budget officer being an
- 14 independent officer of the Legislative Assembly.
- 15 (4) The powers of the Legislative Assembly to act in relation to the
- 16 parliamentary budget officer are as stated in this Act and other
- 17 territory laws.
- 18 (5) In subsection (4):
- 19 ***Legislative Assembly*** includes—
- 20 (a) the members of the Legislative Assembly; and
- 21 (b) the committees of the Legislative Assembly.
- 22 (6) There are no implied powers of the Legislative Assembly arising
- 23 from the parliamentary budget officer being an independent officer
- 24 of the Legislative Assembly.

8 Parliamentary budget officer—independence

- (1) Subject to this Act and to other territory laws, the parliamentary budget officer has complete discretion in the exercise of the officer's functions.
- (2) In particular, the parliamentary budget officer is not subject to direction from anyone in relation to—
- (a) the way in which a particular policy costing is to be carried out; or
 - (b) the priority to be given to any particular matter.

9 Parliamentary budget officer's annual report

The parliamentary budget officer is a public authority for the *Annual Reports (Government Agencies) Act 2004*.

Division 2.2 Appointment of parliamentary budget officer**10 Appointment**

- (1) The Speaker must, on behalf of the Territory, appoint a person as the parliamentary budget officer.
- (2) The appointment must be made—
- (a) on the advice of the public accounts committee; and
 - (b) in consultation with the Chief Minister; and
 - (c) in consultation with the Leader of the Opposition; and
 - (d) in consultation with the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and

Part 2 Parliamentary budget officer
Division 2.2 Appointment of parliamentary budget officer

Section 11

- 1 (e) in accordance with the merit principles set out in the *Public*
 2 *Sector Management Act 1994*, section 65 (Application of merit
 3 principle).
- 4 (3) The Speaker must not appoint a person as the parliamentary budget
 5 officer unless satisfied that the person has extensive knowledge and
 6 experience relevant to the position.
- 7 (4) The parliamentary budget officer is appointed on the terms (if any)
 8 in relation to matters not provided for by this part or a determination
 9 under the *Remuneration Tribunal Act 1995* that are prescribed by
 10 the management standards under the *Public Sector Management*
 11 *Act 1994*.
- 12 (5) An appointment is a disallowable instrument.
- 13 *Note* A disallowable instrument must be notified, and presented to the
 14 Legislative Assembly, under the *Legislation Act*.

15 **11 Acting appointment**

- 16 (1) Before the Speaker appoints a person to act as the parliamentary
 17 budget officer, the Speaker must consult with the presiding member
 18 of the public accounts committee about the proposed appointment.
- 19 (2) However, for a period of leave of absence approved by the Speaker
 20 under section 22, the parliamentary budget officer may appoint a
 21 person to act as the officer after consulting with the Speaker.

22 **12 Term of appointment**

- 23 (1) The parliamentary budget officer must be appointed for not longer
 24 than 4 years.
- 25 *Note* A person may be reappointed to a position if the person is eligible to be
 26 appointed to the position (see *Legislation Act*, s 208 and dict, pt 1,
 27 def *appoint*).
- 28 (2) A parliamentary budget officer is eligible for reappointment, but
 29 must not hold office for a total of more than 8 years.

1 **Division 2.3** **Other provisions applying to**
2 **parliamentary budget officer**

3 **13** **Oath or affirmation of office**

4 Before a person is appointed as the parliamentary budget officer, the
5 person must take an oath of office, or make an affirmation of office,
6 before the Speaker.

7 *Note* For the form of the oath and affirmation of office, see the *Oaths and*
8 *Affirmations Act 1984*, s 6 and sch 1.

9 **14** **Disclosure of interests**

10 The parliamentary budget officer must give a written statement of
11 the officer's personal and financial interests to the Speaker within
12 7 days after—

- 13 (a) the day the officer is appointed; and
14 (b) the first day of each financial year; and
15 (c) the day there is a change in the interest.

16 **15** **Parliamentary budget officer must not do inconsistent**
17 **work etc**

18 The parliamentary budget officer must not—

- 19 (a) have paid employment that is inconsistent with the officer's
20 functions; or
21 (b) engage in any unpaid activity that is inconsistent with the
22 officer's functions.

23 **16** **Resignation**

24 The parliamentary budget officer may resign by giving a signed
25 notice of resignation to the Speaker.

Part 2	Parliamentary budget officer
Division 2.3	Other provisions applying to parliamentary budget officer
Section 17	

- 1 **17 Retirement**
- 2 (1) The Speaker may retire the parliamentary budget officer on the
- 3 ground of physical or mental incapacity if—
- 4 (a) the incapacity substantially affects the exercise of the officer’s
- 5 functions; and
- 6 (b) the officer consents to the retirement.
- 7 (2) However, the parliamentary budget officer must not be retired on
- 8 the ground of invalidity unless—
- 9 (a) if the officer is an eligible employee for the *Superannuation*
- 10 *Act 1976* (Cwlth)—
- 11 (i) the officer is under the officer’s maximum retiring age
- 12 within the meaning of that Act; and
- 13 (ii) a certificate has been given by the Commonwealth
- 14 Superannuation Board of Trustees No 2 under that Act,
- 15 section 54C for the officer; or
- 16 (b) if the officer is a member of the superannuation scheme
- 17 established under the *Superannuation Act 1990* (Cwlth)—
- 18 (i) the officer is under 60 years old; and
- 19 (ii) a certificate has been given by the Commonwealth
- 20 Superannuation Board of Trustees No 1 under that Act,
- 21 section 13 for the officer; or
- 22 (c) if the officer is an ordinary employer-sponsored member of
- 23 PSSAP within the meaning of the *Superannuation Act 2005*
- 24 (Cwlth)—
- 25 (i) the officer is under 60 years old; and
- 26 (ii) a certificate has been given by the Commonwealth
- 27 Superannuation Board of Trustees No 1 under that Act,
- 28 section 43 for the officer.

- 1 (3) In this section:
2 *invalidity* means—
3 (a) for an eligible employee for the *Superannuation Act 1976*
4 (Cwlth)—invalidity under that Act; or
5 (b) for a member of the superannuation scheme established under
6 the *Superannuation Act 1990* (Cwlth)—invalidity under that
7 Act; or
8 (c) for an ordinary employer-sponsored member of PSSAP within
9 the meaning of the *Superannuation Act 2005* (Cwlth)—
10 invalidity under that Act.

11 *physical or mental incapacity* includes invalidity.

12 **18 Suspension—generally**

- 13 (1) The Speaker may suspend the parliamentary budget officer on the
14 ground of—
15 (a) misbehaviour; or
16 (b) physical or mental incapacity, if the incapacity substantially
17 affects the exercise of the officer's functions.
- 18 *Note* Power given by a law to make a decision includes power to reverse or
19 change the decision. The power to reverse or change the decision is
20 exercisable in the same way, and subject to the same conditions, as the
21 power to make the decision (see [Legislation Act](#), s 180).
- 22 (2) If the Speaker is considering suspending the parliamentary budget
23 officer, the Speaker may ask 1 or more of the following for advice
24 about the proposed suspension:
25 (a) the commissioner for public administration;
26 (b) anyone else the Speaker considers appropriate.

Part 2	Parliamentary budget officer
Division 2.3	Other provisions applying to parliamentary budget officer
Section 19	

1 (3) If the Speaker suspends the parliamentary budget officer, the
 2 Speaker must give the officer written notice of the suspension and a
 3 copy of a statement of the reasons for the suspension.

4 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
 5 [Act](#), s 179.

6 (4) The suspension takes effect when the notice and statement are given
 7 to the officer under subsection (3).

8 (5) The parliamentary budget officer may be suspended only under this
 9 section.

10 (6) The parliamentary budget officer is entitled to be paid salary and
 11 allowances while suspended.

12 **19 Suspension—relevant Assembly committee notice and**
 13 **meetings**

14 (1) If the Speaker suspends the parliamentary budget officer, the
 15 Speaker must give written notice of the suspension and a copy of the
 16 statement of the reasons for the suspension to each member of the
 17 public accounts committee not later than the next business day, or if
 18 the committee has not been established, the next business day after
 19 the day the committee is established.

20 (2) The public accounts committee must meet in relation to the
 21 parliamentary budget officer’s suspension—

22 (a) not later than 3 business days after the day the committee is
 23 given written notice of the suspension (the *notice day*); and

24 (b) at subsequent intervals of not longer than 30 days while the
 25 officer is suspended (a *regular meeting*).

26 (3) The public accounts committee must give the parliamentary budget
 27 officer written notice that a regular meeting will be held at least
 28 3 business days before the day the meeting is to be held.

- 1 (4) The parliamentary budget officer may make an oral or written
2 submission (or both) to the public accounts committee about the
3 officer's suspension.
- 4 (5) At each regular meeting, the public accounts committee must review
5 the parliamentary budget officer's suspension and may at any time
6 pass a resolution about the suspension, including a resolution—
- 7 (a) recommending to the Speaker that the Speaker end the
8 suspension; or
- 9 (b) to make a statement to the Legislative Assembly
10 recommending that the Speaker end the officer's appointment.

11 **20 Suspension—ending suspension**

- 12 (1) If the Speaker does not comply with section 19 (1), the suspension
13 ends at the end of the notice day.
- 14 (2) If the public accounts committee fails to hold a meeting as required
15 under section 19 (2), the suspension ends on the day after the last
16 day when the meeting could have been held.
- 17 (3) If the public accounts committee makes a recommendation
18 mentioned in section 19 (5) (a) and the Speaker does not end the
19 suspension within 1 business day after the day the recommendation
20 is made—
- 21 (a) the committee may at any time resolve to make a statement to
22 the Legislative Assembly recommending that the suspension
23 be ended; and
- 24 (b) if the committee makes a statement mentioned in paragraph (a)
25 and—
- 26 (i) the Legislative Assembly resolves to end the
27 suspension—the suspension ends on the passing of the
28 resolution; or

Part 2	Parliamentary budget officer
Division 2.3	Other provisions applying to parliamentary budget officer
Section 21	

- 1 (ii) the Legislative Assembly does not deal with the statement
 2 within 3 sitting days—the suspension ends at the end of
 3 the 3rd sitting day.
- 4 (4) If the public accounts committee makes a statement mentioned in
 5 section 19 (5) (b)—
- 6 (a) the Legislative Assembly may resolve to require the Speaker to
 7 end the parliamentary budget officer’s appointment; but
- 8 (b) if the Legislative Assembly does not, within 3 sitting days,
 9 pass a resolution mentioned in paragraph (a)—the suspension
 10 ends at the end of the 3rd sitting day.
- 11 (5) If the Speaker ends the parliamentary budget officer’s suspension,
 12 the Speaker must give written notice of the ending of the suspension
 13 and a copy of a statement of the reasons for ending the suspension to
 14 the officer and the public accounts committee.
- 15 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
 16 [Act](#), s 179.
- 17 (6) In this section:
- 18 *notice day*—see section 19 (2) (a).
- 19 **21 Ending of appointment**
- 20 (1) The Speaker must end the appointment of the parliamentary budget
 21 officer if—
- 22 (a) the Legislative Assembly—
- 23 (i) passes a resolution under section 20 (4) (a); or
- 24 (ii) otherwise resolves to require the Speaker to end the
 25 officer’s appointment—
- 26 (A) for misbehaviour; or

- 1 (B) for physical or mental incapacity, if the incapacity
2 substantially affects the exercise of the officer's
3 functions; or
- 4 (b) the officer becomes bankrupt or personally insolvent.
- 5 (2) For a resolution mentioned in subsection (1) (a) (ii)—
- 6 (a) at least 7 days before the day the motion to which the
7 resolution relates is first debated in the Legislative Assembly—
- 8 (i) the Assembly must be given the notice of the motion and
9 a statement of reasons for the motion; and
- 10 (ii) the Speaker must—
- 11 (A) give the parliamentary budget officer a copy of the
12 notice and the statement of reasons; and
- 13 (B) tell the parliamentary budget officer that a written
14 submission about the motion may be made to the
15 Speaker not later than 3 days after the day the officer
16 is given the notice; and
- 17 (b) the Speaker must give any written submission to the
18 Legislative Assembly before the day the motion is first debated
19 in the Legislative Assembly.
- 20 (3) The Speaker may end the parliamentary budget officer's
21 appointment if—
- 22 (a) the officer contravenes section 14 (Disclosure of interests)
23 without reasonable excuse; or
- 24 (b) the officer is absent from duty, except on leave granted by the
25 Speaker, for 14 consecutive days or for 28 days in any
26 12 months.
- 27 (4) The parliamentary budget officer's appointment may be ended by
28 the Speaker only under this section or section 17 (Retirement).

Part 2 Parliamentary budget officer
Division 2.4 Office of the parliamentary budget officer

Section 22

1 **22 Leave of absence**

2 The Speaker may approve leave of absence for the parliamentary
 3 budget officer on the terms the Speaker decides.

4 **Division 2.4 Office of the parliamentary budget**
 5 **officer**

6 **23 Staff**

- 7 (1) The parliamentary budget officer's staff must be employed under
 8 the *Public Sector Management Act 1994*.
- 9 (2) The parliamentary budget officer has the powers mentioned in the
 10 *Public Sector Management Act 1994*, section 25 (3) (Powers of
 11 certain statutory office-holders) in relation to the parliamentary
 12 budget officer's staff.

13 **24 Contractors**

14 The parliamentary budget officer may, on behalf of the Territory,
 15 engage a person under a contract to assist in the exercise of any
 16 function of the officer.

17 **25 Staff not subject to direction from others**

- 18 (1) The parliamentary budget officer's staff are not subject to direction
 19 from anyone other than the following people in relation to the
 20 exercise of the parliamentary budget officer's functions:
- 21 (a) the parliamentary budget officer;
- 22 (b) another member of the parliamentary budget officer's staff
 23 authorised by the parliamentary budget officer to give
 24 directions.

1 (2) In this section:

2 *staff* means—

3 (a) staff mentioned in section 23; and

4 (b) a contractor mentioned in section 24.

5 **26 Arrangements with directorates**

6 The parliamentary budget officer may make arrangements with the
7 director-general of a directorate for the use of the services of public
8 servants, or the use of facilities, in the directorate.

9 **27 Delegation**

10 The parliamentary budget officer may delegate the officer's
11 functions under this Act to—

12 (a) a member of the staff assisting the parliamentary budget
13 officer; or

14 (b) a person engaged by the parliamentary budget officer under
15 section 24 (Contractors).

16 *Note* For the making of delegations and the exercise of delegated functions,
17 see the [Legislation Act](#), pt 19.4.

18 **Division 2.5 Functions and powers**

19 **28 Functions**

20 (1) The parliamentary budget officer has the following functions:

21 (a) outside the pre-election period for an election—to prepare
22 policy costings on request by a member of the Legislative
23 Assembly;

24 *Note* A request for a policy costing outside the pre-election period is
25 dealt with in s 31.

Part 2 Parliamentary budget officer
Division 2.5 Functions and powers

Section 29

1 (b) during the pre-election period for an election—to prepare
 2 policy costings on request by an authorised member of a
 3 parliamentary party or an independent member of the
 4 Legislative Assembly;

5 *Note* A request for a policy costing during the pre-election period is
 6 dealt with in s 32.

7 (c) to prepare responses (other than policy costings) to requests
 8 relating to the budget papers by a member of the Legislative
 9 Assembly;

10 (d) to prepare submissions to inquiries of a Legislative Assembly
 11 committee on request by the committee;

12 (e) on the officer's own initiative (including in anticipation of a
 13 request mentioned in paragraphs (a) to (d)), to conduct research
 14 on and analysis of the budget papers and fiscal policy settings.

15 (2) The parliamentary budget officer's functions do not include—

16 (a) preparing economic forecasts; or

17 (b) preparing budget estimates (whether at the
 18 whole-of-government, agency or program level).

19 (3) The parliamentary budget officer must carry out the officer's
 20 functions consistent with the object of this Act.

21 **29 Arrangements for obtaining information from Territory**
 22 **entities**

23 (1) The parliamentary budget officer may make an arrangement, in
 24 writing, with the head (however described) of a territory entity, or a
 25 person authorised by the head, for the officer to obtain from the
 26 entity information and documents relevant to the officer's functions.

1 (2) An arrangement under subsection (1) may provide for the
2 confidentiality of information disclosed or documents provided
3 under the arrangement.

4 *Note* Information must not be disclosed if disclosure would contravene a
5 confidentiality provision—see s 43 (2).

6 (3) An arrangement made under this section must be made publicly
7 available.

8 **Example—publicly available**

9 published on the Legislative Assembly website

10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 [Legislation Act](#), s 126 and s 132).

13 **30 Approaches etc to be used in preparing policy costings**

14 (1) The parliamentary budget officer must, with the agreement of the
15 head of service, issue written principles setting out approaches and
16 costing conventions to be used in preparing policy costings under
17 this division.

18 (2) The parliamentary budget officer must make the written principles
19 publicly available.

20 **31 Requests for policy costings outside pre-election periods**

21 (1) A member of the Legislative Assembly may, outside a pre-election
22 period, request the parliamentary budget officer to prepare a costing
23 of a policy or a proposed policy.

24 (2) The request—

25 (a) must be in writing; and

26 (b) must outline fully the policy to be costed, giving relevant
27 details; and

28 (c) must state the purpose or intention of the policy; and

Part 2 Parliamentary budget officer
Division 2.5 Functions and powers

Section 32

- 1 (d) may include a direction to treat the request, the policy costing
 2 or any other information relating to the request as confidential.
- 3 (3) If the parliamentary budget officer needs more information to cost
 4 aspects of the policy, the officer may ask the member, in writing, for
 5 the information.
- 6 (4) The member may, by notice in writing, withdraw the member's
 7 request at any time.
- 8 (5) If the parliamentary budget officer does not have sufficient
 9 information, or has not had sufficient time, to prepare the policy
 10 costing before the next election, the request is taken to be withdrawn
 11 immediately before the start of the pre-election period for the next
 12 election.

13 **32 Requests for policy costings during pre-election periods**

- 14 (1) An authorised member of a parliamentary party may, during a
 15 pre-election period, request the parliamentary budget officer to
 16 prepare a costing of a publicly announced policy of the
 17 parliamentary party.
- 18 (2) An independent member of the Legislative Assembly may, during a
 19 pre-election period, request the parliamentary budget officer to
 20 prepare a costing of a publicly announced policy of the member.
- 21 (3) The request must—
- 22 (a) be in writing; and
- 23 (b) outline fully the policy to be costed, giving relevant details;
 24 and
- 25 (c) state the purpose or intention of the policy.
- 26 (4) If the parliamentary budget officer needs more information to cost
 27 aspects of the policy, the officer may ask the authorised member or
 28 independent member, in writing, for the information.

- 1 (5) An authorised member of a parliamentary party may, by notice in
2 writing, withdraw a request made for the parliamentary party.
- 3 (6) An independent member of the Legislative Assembly may, by
4 notice in writing, withdraw the member's request.

5 **33 Pre-election period policy costing requests—**
6 **information-gathering**

- 7 (1) The parliamentary budget officer may ask the head (however
8 described) of a territory entity (the *head*) to give the officer
9 information, to assist the officer to prepare a policy costing in
10 response to a request under section 32.
- 11 (2) The parliamentary budget officer may make the request after the
12 policy costing request is made and before the polling day.
- 13 (3) If a head receives a request under subsection (1), the head must
14 comply with the request in time for the information to be taken into
15 account in preparing the policy costing, unless—
- 16 (a) it is not practicable to do so; or
- 17 (b) it would be unlawful to do so; or
- 18 (c) it would require the head to disclose confidential commercial
19 information.
- 20 (4) If the head gives information to the parliamentary budget officer in
21 response to a request under subsection (1), the head may ask that
22 some or all of the information be kept confidential.

23 *Note* Information must not be disclosed if disclosure would contravene a
24 request that the information be kept confidential—see s 43 (5).

- 1 **34** **Pre-election period policy costing requests—public**
 2 **release of requests and costings**
- 3 (1) This section applies to a request for a policy costing made under
 4 section 32 (Requests for policy costings during pre-election
 5 periods).
- 6 (2) The parliamentary budget officer must publicly release the request
 7 and the policy costing—
- 8 (a) as soon as practicable after the officer receives the request; and
 9 (b) before the polling day for the election.
- 10 (3) If the parliamentary budget officer does not have sufficient
 11 information, or has not had sufficient time, to prepare the policy
 12 costing and publicly release the request and policy costing before
 13 the polling day for the election—
- 14 (a) the officer must publicly release a statement to that effect
 15 before the polling day; and
- 16 (b) the request is taken to be withdrawn on that day; and
- 17 (c) the officer must not take any further action in relation to the
 18 request.
- 19 (4) This section does not apply to a request that is withdrawn under
 20 section 32 (5) or (6).

21 **35** **Requests relating to the budget papers**

22 A request mentioned in section 28 (1) (c) (Functions) may include a
 23 direction to treat the request, the response to the request or any
 24 information relating to the request as confidential.

25 *Note* Information must not be disclosed if disclosure would contravene a
 26 request that the information be treated as confidential—see s 43 (1).

1 **36 Parliamentary budget officer not subject to direction**

2 The parliamentary budget officer is not subject to direction from the
3 Speaker in relation to the performance of the officer's functions
4 under section 28 (1).

5 **37 Public release of policy costings etc**

6 (1) The parliamentary budget officer must make the following
7 information and documents publicly available:

8 (a) requests for policy costings made under section 31 (Requests
9 for policy costings outside pre-election periods) or section 32
10 (Requests for policy costings during pre-election periods);

11 (b) any withdrawals of requests for policy costings made under
12 section 31 or section 32;

13 (c) requests relating to the budget papers mentioned in
14 section 28 (1) (c) and responses to the requests prepared by the
15 parliamentary budget officer;

16 (d) requests by Legislative Assembly committees mentioned in
17 section 28 (1) (d) and responses to the requests prepared by the
18 parliamentary budget officer;

19 (e) the results of any other work done by the parliamentary budget
20 officer carrying out the officer's functions under section 28 (1).

21 **Examples—publicly available**

22 1 published on the Legislative Assembly website

23 2 media release issued by the parliamentary budget officer

24 *Note* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 [Legislation Act](#), s 126 and s 132).

27 (2) This section is subject to section 43 (Confidentiality).

1 **Division 2.6** **Review of parliamentary budget**
 2 **officer's operations**

3 **38** **Review to be carried out after election**

- 4 (1) After an election, the public accounts committee may decide that a
 5 review of the parliamentary budget officer's operations is to be
 6 carried out.
- 7 (2) If the committee decides that a review is to be carried out, the
 8 committee must decide when the review is to be carried out.

9 **39** **Appointment of reviewer**

- 10 (1) If the public accounts committee decides that a review of the
 11 parliamentary budget officer's operations is to be carried out, the
 12 public accounts committee must ask the Speaker to, on behalf of the
 13 Territory, engage a person to conduct the review.
- 14 (2) If requested by the public accounts committee, the Speaker must, on
 15 behalf of the Territory, engage an appropriately qualified person
 16 (the *reviewer*) under a contract to conduct the review.

17 **40** **Review to be conducted as requested**

- 18 (1) If the Speaker engages a reviewer under section 39—
- 19 (a) the public accounts committee must—
- 20 (i) decide terms of reference for the review, in consultation
 21 with the Minister; and
- 22 (ii) ask the reviewer to conduct the review according to the
 23 terms of reference; and
- 24 (b) the reviewer must—
- 25 (i) conduct the review as soon as practicable after receiving
 26 the request; and

1 (ii) complete the review within 9 months after the election
2 following which the request was made.

3 (2) The reviewer may conduct a review of the parliamentary budget
4 officer's operations only when requested under this division.

5 **41 Comments on proposed review report**

6 (1) This section applies if the reviewer is preparing a report about the
7 review for the Legislative Assembly under section 42.

8 (2) The reviewer must give the parliamentary budget officer—

9 (a) a copy of the proposed report; and

10 (b) a written notice stating that the parliamentary budget officer
11 may give written comments about the proposed report to the
12 reviewer before the end of—

13 (i) 14 days after the day the notice is given to the
14 parliamentary budget officer; or

15 (ii) a longer period stated in the notice.

16 (3) If the reviewer receives comments under this section, the reviewer
17 must consider the comments in preparing the final report.

18 (4) In this section:

19 *proposed report* means a draft version of a report.

20 **42 Review report**

21 (1) As soon as practicable after completing a review, the reviewer must
22 give a report about the review to the Speaker.

23 (2) The report must include the substance of any comments received by
24 the reviewer under section 41 (3).

25 (3) The Speaker must present a copy of the report to the Legislative
26 Assembly.

1 **Part 3** **Miscellaneous**

2 **43** **Confidentiality**

- 3 (1) An entrusted person must not disclose information relating to a
 4 request mentioned in section 28 (1) (a) or (c) if the request included
 5 a direction to treat the information as confidential under—
- 6 (a) section 31 (2) (d) (Requests for policy costings outside
 7 pre-election periods); or
- 8 (b) section 35 (Requests relating to the budget papers).
- 9 (2) An entrusted person must not disclose information received by the
 10 parliamentary budget officer in accordance with an arrangement
 11 under section 29 (Arrangements for obtaining information from
 12 Territory entities) if the disclosure would contravene a
 13 confidentiality provision in the arrangement.
- 14 (3) Subsection (1) does not prevent an entrusted person disclosing
 15 information relating to a request for the purpose of complying with
 16 the request.
- 17 (4) Despite subsection (1), but subject to subsection (2), the
 18 parliamentary budget officer may make a public statement to clarify
 19 a matter relating to the response to a request mentioned in
 20 section 28 (1) (a) or (c) if—
- 21 (a) the request included a direction under section 31 (2) (d) or
 22 section 35 to treat the information relating to the request as
 23 confidential; and
- 24 (b) the parliamentary budget officer is satisfied that it is necessary
 25 in the public interest to make the statement.

- 1 (5) An entrusted person must not disclose information given to the
 2 parliamentary budget officer by the head of a territory entity under
 3 section 33 (3) (Pre-election period policy costing requests—
 4 information-gathering) if the head requested under section 33 (4)
 5 that the information be kept confidential.
- 6 (6) Subsection (5) does not prevent an entrusted person disclosing
 7 information mentioned in subsection (5) for the purpose for which
 8 the information was obtained, but the information must not be
 9 further disclosed.
- 10 (7) In this section:
- 11 *entrusted person* means—
- 12 (a) the parliamentary budget officer; and
- 13 (b) a member of the parliamentary budget officer’s staff; and
- 14 (c) a person acting under the direction or authority of the
 15 parliamentary budget officer.
- 16 *staff* means—
- 17 (a) staff mentioned in section 23; and
- 18 (b) a contractor mentioned in section 24.
- 19 **44 Access to documents relating to policy costing request**
- 20 (1) For the FOI Act, a document in relation to a request to prepare a
 21 policy costing is an exempt document.
- 22 (2) However, subsection (1) does not apply in relation to a request
 23 under either of the following sections of the FOI Act if the request is
 24 made by the person who made the costing request to which the
 25 document relates:
- 26 (a) section 14 (Requests for access);

Part 3 Miscellaneous

Section 45

- 1 (b) section 48 (Persons may make application for amendment of
2 records).
- 3 (3) Subsection (1) is additional to, and does not limit, the operation of
4 the FOI Act, part 4 (Exempt documents).
- 5 (4) In this section:
6 *FOI Act* means the *Freedom of Information Act 1989*.
- 7 **45 Protection of parliamentary budget officer etc from**
8 **liability**
- 9 (1) A protected person is not personally liable for conduct done
10 honestly and without recklessness—
- 11 (a) in the exercise of a function under this Act or another law; or
12 (b) in the reasonable belief that the conduct was in the exercise of
13 a function under this Act or another law.
- 14 (2) Any liability that would, apart from this section, attach to the
15 protected person attaches instead to the Territory.
- 16 (3) In this section:
17 *conduct* means an act or an omission to do an act.
18 *protected person* means a person who is or has been—
19 (a) the parliamentary budget officer; or
20 (b) a member of the staff of the parliamentary budget officer.
21 *staff* means—
22 (a) staff mentioned in section 23; and
23 (b) a contractor mentioned in section 24.

1 **46 Reports to be given to Speaker**

2 (1) A report or response required by this Act to be given to the Speaker
3 must—

4 (a) if the Speaker is unavailable—be given to the Deputy Speaker;
5 or

6 (b) if both the Speaker and Deputy Speaker are unavailable—be
7 given to the clerk of the Legislative Assembly.

8 (2) For subsection (1), the Speaker or Deputy Speaker is unavailable
9 if—

10 (a) he or she is absent from duty; or

11 (b) there is a vacancy in the office.

12 **47 Regulation-making power**

13 The Executive may make regulations for this Act.

14 *Note* A regulation must be notified, and presented to the Legislative
15 Assembly, under the [Legislation Act](#).

Part 4 Repeals and consequential amendments

Section 48

1 **Part 4** **Repeals and consequential**
2 **amendments**

3 **48** **Repeal of Election Commitments Costing Act 2012**

4 The *Election Commitments Costing Act 2012* (A2012-47) is
5 repealed.

6 **49** **Legislation Act 2001**
7 **Dictionary, part 1, definition of *officer of the Assembly*,**
8 **new paragraph (d)**

9 *insert*

10 (d) the parliamentary budget officer.

11 **50** **Legislation Act 2001**
12 **Dictionary, part 1, new definition of *parliamentary budget***
13 ***officer***

14 *insert*

15 *parliamentary budget officer* means the parliamentary budget
16 officer under the *Legislative Assembly (Parliamentary Budget*
17 *Officer) Act 2016*.

1 Dictionary

2 (see s 3)

3 *Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- 6 • ACT
- 7 • administrative unit
- 8 • Chief Minister
- 9 • Deputy Speaker
- 10 • director-general (see s 163)
- 11 • document
- 12 • entity
- 13 • Legislative Assembly
- 14 • Minister (see s 162)
- 15 • Speaker
- 16 • territory authority
- 17 • territory instrumentality
- 18 • the Territory.

19 ***authorised member***, of a parliamentary party, means—

20 (a) the leader of the parliamentary party; or

21 (b) a member of the parliamentary party authorised, in writing, by
22 the leader of the parliamentary party to act under this section.

23 ***budget papers***—see the [Financial Management Act 1996](#),
24 dictionary.

25 ***election***—see the [Electoral Act 1992](#), dictionary.

26 ***independent member***, during a pre-election period for an election,
27 means a person—

28 (a) who is not a member of a parliamentary party; and

Dictionary

- 1 (b) who intends to be a candidate in the election without the
2 endorsement of a registered party; and
- 3 (c) who, immediately before the pre-election period for the
4 election, was a member of the Legislative Assembly because
5 the person—
- 6 (i) had been elected to the Legislative Assembly without the
7 endorsement of a registered party; or
- 8 (ii) had been chosen or declared elected to fill a casual
9 vacancy without the endorsement of a registered party.
- 10 ***parliamentary party***—
- 11 (a) means a registered party at least 1 member of which is a
12 member of the Legislative Assembly; and
- 13 (b) during a pre-election period for an election—includes a
14 registered party at least 1 member of which was a member of
15 the Legislative Assembly immediately before the pre-election
16 period.
- 17 ***polling day***—see the *Electoral Act 1992*, dictionary.
- 18 ***pre-election period***—see the *Electoral Act 1992*, dictionary.
- 19 ***public accounts committee*** means the committee of the Legislative
20 Assembly whose functions include the examination of financial
21 statements for the Territory, a directorate or a territory authority.
- 22 ***registered party***—see the *Electoral Act 1992*, dictionary.
- 23 ***territory entity*** means—
- 24 (a) an administrative unit; or
- 25 (b) a territory authority; or
- 26 (c) a territory instrumentality.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 4 May 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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Appendix B **LEGISLATIVE ASSEMBLY (PARLIAMENTARY BUDGET
OFFICER) BILL 2016 – EXPLANATORY STATEMENT**

2016

**The Legislative Assembly for the
Australian Capital Territory**

LEGISLATIVE ASSEMBLY (PARLIAMENTARY BUDGET OFFICER) BILL 2016

EXPLANATORY STATEMENT

**Presented by
Brendan Smyth MLA
Shadow Treasurer**

INTRODUCTION

This Explanatory Statement relates to the Legislative Assembly (Parliamentary Budget Officer) Bill 2016 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and inform the Assembly's consideration of its utility. This statement does not form part of the Bill and is not endorsed by the Assembly.

This statement must be read in conjunction with the Bill and is not, and not meant to be, a comprehensive description of the Bill. Whatever is said about a provision in this Statement is not to be taken as an authoritative guide to the meaning of a provision as this is a task for the courts.

PURPOSE OF THIS BILL

The purpose of this Bill is to establish a legal basis for providing Legislative Assembly members with an independent, non-partisan analysis of the budget cycle, the budget, financial policy, and a policy costing service by way of a Parliamentary Budget Office (PBO). The service would be provided to Legislative Assembly members and to Legislative Assembly Committees. The Bill also sets out the rights, powers, obligations and functions of the various entities, positions and persons related to the functioning of the PBO.

The PBO would undertake specified functions as an independent officer of the Legislative Assembly. The PBO would have complete discretion in the exercise of approved functions and would not be subject to direction from anyone in regard to the way a policy costing was undertaken nor in regard to the priority assigned to any particular costing matter. The PBO (as a public authority) would perform the following functions:

- Outside the pre-election period for an election – to prepare policy costings on request by a member of the Legislative Assembly;
- During the pre-election period for an election – to prepare policy costings on request by an authorised member of a parliamentary party or an independent member of the Legislative Assembly;
- To prepare responses (other than policy costings) to requests relating to the budget papers by a member of the Legislative Assembly;
- To prepare submissions to inquiries of a Legislative Assembly committee on request by the committee;
- On the Officer's own initiative (including in anticipation of requests), to conduct research on, and analysis of, the budget papers and financial policy settings.

The Bill also sets out:

- The appointment process for the PBO - appointed by the Speaker on the advice of the Public Accounts Committee in consultation with the Chief Minister, the Leader of the Opposition and Leader of a registered party (other than that to which the Chief Minister or Leader of the Opposition belongs) and in accordance with merit principles set out in the *Public Sector Management Act 1994*;
- Acting arrangements and appointment terms;
- Conditions of employment for the PBO, including taking an Oath of Office, disclosure of interests and undertaking activities inconsistent with their function;
- Resignation, retirement and suspension conditions and arrangements;
- Staffing (staff must be employed under the *Public Sector Management Act 1994*);
- Overall functions and powers;
- Arrangements for obtaining information from Territory entities;
- Approaches to be used in preparing policy costings;
- Handling of requests for policy costings outside pre-election periods and requests for policy costings during pre-election periods;
 - If the PBO does not have sufficient information, or has not had sufficient time to prepare the policy costing before the next election, then the request is taken to be withdrawn.
- Public release of policy costings - in relation to requests for policy costings;
 - During pre-election periods, the PBO must publicly release a policy costing request and the policy costing,
 - Outside pre-election periods – the PBO must make publicly available, requests for policy costings, and
 - Various other requests (eg from Legislative Assembly Committees, withdrawal requests or requests in relation to the budget papers).
- Review process for the PBO's operations; and
- Other miscellaneous provisions.

OUTLINE OF THE PROVISIONS

The following is a brief summary of each of the provisions flagged by section number contained in the Bill. It is stressed that the following is a précis and general summary only. The reader must refer to the relevant section of the Bill for exact prescriptions, meanings and context.

1 Name of the Act

The proposed Act is the *Legislative Assembly (Parliamentary Budget Officer) Bill 2016*.

2 Commencement

The Act commences on the day after its notification day.

3 Dictionary

The dictionary provided at the end of the Act is part of the Act.

4 Notes

Notes are explanatory and are not part of the Act.

5 Object of the Act

This sets out the objectives of the Act to establish a Parliamentary Budget Officer to provide independent non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals made by members of the Legislative Assembly.

6 Parliamentary Budget Officer

This states the requirement for a PBO.

7 Office of the Legislative Assembly

This Section prescribes the status of the PBO and powers of the Legislative Assembly in relation to the PBO as an independent officer of the Legislative Assembly.

8 Parliamentary Budget Officer – independence

This Section assigns the PBO complete discretion in the exercise of the Officer's functions and ensures the Officer is not subjected to direction from anyone in relation to costing methods (ie the way in which a particular policy costing is carried out) or the priority given to any particular matter.

9 Parliamentary Budget Officer's annual report

This Section establishes the PBO as a public authority for the purpose of the *Annual Reports (Government Agencies) Act 2004*.

10 Appointment

This Section provides the Speaker with power to appoint the PBO on the advice of the Public Accounts Committee and in consultation with designated members of the Legislative Assembly including the Chief Minister, Leader of the Opposition and Leader of another registered party (if at least 2 members of the Legislative Assembly are members of that party).

Appointments must be made in accordance with merit principles stated in the *Public Sector Management Act 1994* (Section 65) and the Speaker must be satisfied that the proposed appointee has extensive knowledge and experience relevant to the PBO position.

The appointment is also a disallowable instrument.

11 Acting appointment

Considerations under which a person may be appointed to act as PBO are prescribed in this Section including requirements for consultation with the presiding member of the Public Accounts Committee (PAC). In some circumstances the PBO may appoint a person to act after consulting with the Speaker.

12 Term of appointment

The PBO's term is limited to 4 years and is eligible for reappointment for a total of not more than 8 years.

13 Oath or affirmation of office

Before appointment, the PBO designate must take an oath of office or make an affirmation of office before the Speaker.

14 Disclosure of interests

This Section protects the integrity of the appointment process by requiring the PBO to give a written statement in relation to the Officer's personal and financial interests to the Speaker.

15 Parliamentary Budget Officer must not do inconsistent work etc

Under this Section, the PBO must not engage in paid employment, or engage in an activity inconsistent with the Officer's functions

16 Resignation

The PBO may resign by giving a signed notice to the Speaker.

17 Retirement

This Section prescribes the grounds upon which the Speaker may retire the PBO including the conditions for an invalidity retirement. It also prescribes age and superannuation circumstances and other conditions to be satisfied.

The meaning of invalidity is also defined for the purposes of this Section.

18 Suspension – generally

The grounds on which the Speaker may suspend the PBO are prescribed as:

- a. Misbehaviour;
- b. Physical or mental incapacity

In these circumstances, the Speaker may also seek advice from the Commissioner for Public Administration or anyone else the Speaker considers appropriate. If suspended, the Speaker must also give the Officer written notice of the suspension. The Officer is entitled to be paid their salary and allowances whilst under suspension.

19 Suspension – relevant Assembly committee notice and meetings

This Section places obligations on the Speaker in regard to the suspension of the PBO – see S 19(1). These include; provision of a written notice and statement of reasons for the suspension to each member of the Public Accounts Committee (PAC).

It also requires the PAC to meet in relation to the PBO's suspension at specified intervals – see S19(2), and allows the PBO to make oral and written submissions to the PAC in relation to the suspension. The PAC is obliged to review the PBO's suspension and can recommend to end the suspension or uphold it (the latter by way of a statement to the Legislative Assembly).

20 Suspension – ending suspension

The Speaker is required to comply with Clause (1) of Section 19 above. If the Speaker does not comply ie by notifying the PAC per S19(1), this Section enables the suspension to end at the end of the notice day. Likewise, if the PAC fails to meet per S19(2), the suspension ends on the day after the last day when a meeting could have been held.

In summary, this Section sets out the action where either the Speaker, the PAC, or the Legislative Assembly fails to meet with a specified requirement which could result in either the suspension ending or being upheld.

21 Ending of Appointment

This Section prescribes the due process for ending an appointment of a PBO.

In Clause (1), the Speaker is required to end the PBO's appointment if resolved by the Legislative Assembly under S20(4)(a) or due to misbehaviour, physical or mental incapacity, or because the Officer becomes bankrupt or personally insolvent.

Clause (2) prescribes the conditions for dealing with a resolution to end the PBO's appointment including the amount of notice, and the timing of written submissions from the Speaker.

Other bases for ending an appointment are also prescribed including the Officer contravening disclosure of interests requirements (in S14) or absence from duty other than for leave granted by the Speaker.

22 Leave of Absence

The Speaker is empowered to approve leave of absence of the PBO on terms decided by the Speaker.

23 Staff

This Section requires the PBO's staff to be employed under the *Public Sector Management Act 1994*. It also gives the PBO powers mentioned in S25(3) of that Act ie powers of certain statutory office holders to exercise authority over employed staff.

24 Contractors

This provision allows the PBO to engage contract staff to assist with approved functions,

25 Staff not subject to direction from others

The independence of the Office is reinforced by this Section which ensures that PBO's staff are not subject to direction from anyone other than the PBO or another member of the Office authorised by the PBO to give directions.

26 Arrangements with directorates

The PBO is enabled to make arrangements with the director-general of a directorate for the services of public servants or use of directorate facilities.

27 Delegation

This Section allows the PBO to delegate functions to PBO staff members or to a contractor engaged by the PBO under S24.

28 Functions

This Section sets out the broad functions of the PBO as follows:

- a. Outside the pre-election period - preparation of policy costings on request by a Legislative Assembly member;
- b. During pre-election period for an election – preparation of policy costings on request by an authorised member of a parliamentary party or an independent member of the Legislative Assembly;
- c. Preparation of responses to requests by Legislative Assembly members relating to the budget papers;
- d. Preparation of submissions to inquiries of a Legislative Assembly Committee on requests by the Committee; and
- e. Conduct of research and analysis by the PBO in anticipation of requests relating to budget papers and fiscal policy.

It also sets out what the PBO is not responsible for– namely:

- a. Economic forecasting; and
- b. Preparation of budget estimates for government as a whole, an agency or a program.

29 Arrangements for obtaining information from Territory entities

It is recognised that the PBO will rely on external sources for information. This Section empowers the PBO to enter into arrangements (in writing) with the head of a Territory entity, or a person authorised by the entity head, for the PBO to obtain information and documents relevant to the PBO's functions. This will include information confidentiality considerations. The arrangement must be made publicly available.

30 Approaches etc to be used in preparing policy costings

This Section empowers the PBO (in agreement with the head of service) to issue written principles on approaches and costing conventions to be used in preparing policy costings. The principles must be made publicly available.

31 Requests for policy costings outside pre-election periods

This Section prescribes requirements for a Legislative Assembly member when lodging a request on the PBO for a policy or proposal costing outside a pre-election period. The request must be in writing, fully outline the policy to be costed including its intention and purpose, and any confidentiality considerations.

Members can withdraw a request by written notice. If the PBO does not have sufficient information, or time to prepare the costing before the next election, the request is deemed to be withdrawn immediately before the start of the pre-election period for the next election.

32 Requests for policy costings during pre-election periods

This Section prescribes requirements in relation to authorised members of a parliamentary party (or an independent member) during a pre-election period. Requests for preparation of a costing of a publicly announced policy of the party (or independent member) must be in writing and fully outline the purpose and intent of the policy and its detail.

It also sets out the items to be included in the request, eg it must be in writing and must fully outline the policy being costed including its purpose and intentions. The PBO may seek further information from the authorised member as required. Requests can be withdrawn by written notice.

33 Pre-election period costing requests – information gathering

This Section obligates the head of a Territory entity to comply with a PBO request for information to be provided in time for preparation of the policy costing unless impractical, unlawful or if it requires disclosure of confidential information. The Territory head can ask that some or all the information be kept confidential.

34 Pre-election period costing requests – public release of requests and costings

For requests received in the pre-election period, this Section obliges the PBO to publicly release both the request and the policy costing as soon as practicable after receiving the request and before the polling day for the election.

If the PBO cannot meet the request due to lack of information or time, the Officer must publicly release a statement to that effect before polling day. The request is then taken to be withdrawn on that day.

35 Requests relating to the budget papers

This provision enables requesting members or committees to ask that the request or related information be treated as confidential.

36 Parliamentary Budget Officer not subject to direction

The provision reinforces the independence of the PBO by stating it is not subject to direction from the Speaker in relation to performance of the Officer's functions under S28(1).

37 Public release of policy costings etc

Subject to S43 confidentiality considerations, this Section prescribes the PBO's requirement to make certain information and documents publicly available. These include:

- a. Requests for policy costings outside or during pre-election periods (S31 and S32);
- b. Any withdrawals of requests;
- c. Requests relating to budget papers mentioned in the functions detailed in S28(1)(c) and responses to requests prepared by the PBO;
- d. Requests by Legislative Assembly Committees mentioned in S28(1)(d) and the related response from the PBO; and
- e. The results of any other work conducted by the PBO under S28(1).

38 Review to be carried out after election

The PAC may decide to review the operations of the PBO after an election (including when to conduct a review).

39 Appointment of reviewer

If the PAC decides to conduct a review, it must ask the Speaker on behalf of the Territory, to engage a person to conduct the review. In this regard, the Speaker must engage an appropriately qualified person.

40 Review to be conducted as requested

This Section specifies requirements for a review including the need for Terms of Reference and timings (note that reviews must be completed 9 months after the election following which the request was made).

41 Comments on proposed review report

This Section sets out the reviewer's responsibilities including the need for a reviewer to give the PBO a copy of the proposed report. It also prescribes response timings and an obligation by the reviewer to consider comments received from the PBO.

42 Review report

The reviewer must give their report about a review to the Speaker and must include the substance of any comments received by the reviewer. The Speaker must then present a copy of the report to the Legislative Assembly.

43 Confidentiality

This Section sets out the obligations of entrusted persons in relation to confidential information and its disclosure (and including the meaning of an entrusted person).

44 Access to documents relating to policy costing request

This Section makes a document in relation to a request to prepare a policy costing an exempt document for the purposes of the FOI Act. It also sets out other conditions in relation to FOI.

45 Protection of parliamentary budget officer etc from liability

This Section defines a protected person. It states they are not personally liable for honest conduct without recklessness in relation to the functions exercised under this Act and in the reasonable belief that the conduct was in the performance of a function under this Act.

46 Reports to be given to Speaker

This Section prescribes requirements for submission of reports required by this Act including to the Speaker or alternatively, in the Speaker's absence, the Deputy Speaker or, in the Deputy Speaker's absence, the Clerk of the Legislative Assembly.

47 Regulation-making power

This provision enables the Executive to make regulations for this Act.

48 Legislation repealed

This Act repeals the *Election Commitments Costing Act 2012*.

49 Legislation Act, dictionary, part1, definition of *Officer of the Assembly*, new paragraph (d)

This provision makes an adjustment to the *Legislation Act 2001* Dictionary Part 1 (definition of Officer of the Assembly) by inserting "the parliamentary budget officer".

50 Legislation Act, dictionary, part1, definition of *parliamentary budget officer*

This adjusts the Dictionary by including the definition of the *parliamentary budget officer*.

In conclusion it is believed that this Bill will considerably assist all members of the Legislative Assembly and improve its productivity and effectiveness.

3 May 2016

Appendix C PRESENTATION STATEMENT MADE BY MR SMYTH MLA ON PRESENTATION OF THE LEGISLATIVE ASSEMBLY, (PARLIAMENTARY BUDGET OFFICER) BILL 2016

Presentation Statement for the Legislative Assembly (Parliamentary Budget Officer) Bill 2016 by Mr Brendan Smyth MLA – 4 May 2016

Legislative Assembly (Parliamentary Budget Officer) Bill 2016

Mr Smyth, pursuant to notice, presented the bill and its explanatory statement.

Title read by Clerk.

MR SMYTH (Brindabella) (10.07): I move:

That this bill be agreed to in principle.

The issue of costings of all policies by any political party is very important. Indeed the financial work done by committees of the Assembly is very important and the scrutiny that appears in the budget is very important, because to have sustainable long-term government delivery of services in this territory we must be able to pay for them.

Over the years, we have had some interesting conflicts. If I were to hark back to the bad old days, I remember a brochure that the Labor Party put out. It was a big, glossy, red-covered A4 sheet with a statement "It's the fact" stamped all over the front. It was about how certain policies were going to drive the territory into debt and deficit for decades, all of which was untrue.

We have had some evolution in regard to this issue. Indeed in the previous Assembly there was consideration of a parliamentary budget officer. What was determined was that we would give some financial support to the estimates committee to have an economics adviser to provide some support in regard to its work and that also a bill would be introduced, now called the Election Commitments Costing Act 2012. It set out a certain process. Having watched over the past four years, and indeed over the past four or five terms, how this works, it is time that we take the next step.

The idea of the PBO was a good idea in the last Assembly. I note that since then in July 2012 even the federal parliament has established a parliamentary budget officer. Having consulted with colleagues there, I can say that everyone is very pleased with the performance of that office, the way it assists the formation of policy and how it makes sure that Treasury, which often ends up being the final arbiter on these things, is not politicised.

The reason I table this bill today is to confirm that we do not want to go back to the bad old days. There are some very good examples where there are differences in costings. Indeed, at the last election, whether it was the delivery of green bin services or school class sizes, for example, there was some argy-bargy, and this will always be the case. But if we can have an individual whose job, guaranteed by the independence of the position, is to make sure that all policies are costed, and costed in the same way, we can then actually have a much more productive discussion on the validity and the utility of the policy rather than one side's assertion that the other side has got the numbers wrong.

We will all have to add up the numbers in the end and make the case for what it is we want to do but this, I think, is the next step in the process. We have had these conflicts in the past. To address that we passed the Election Commitments Costing Act 2012. I am not sure we all agree it was perfect but it was a good step forward. I think it certainly helped and it took a lot of that angst away. But there is still a reliance on Treasury.

Treasury does a set of standard costings for standard functions. Treasury still gets to receive the policy. Treasury then still has to make the decision. Let's face it; at the end of the day the Treasury works for the government, whoever that might be. So the next step to make sure that this independence is still right is to go for an even better and more independent model.

What this bill would do is give access to a fully independent policy costing unit separate from the Treasury directorate. That independent body would be called the parliamentary budget officer. The bill to establish the parliamentary budget officer ensures that all members get support on a level playing field. The public accounts committee, for instance, would have access to those services, as would any of the committees.

This goes beyond individuals or parties. It is actually designed to be of assistance and an aid to all of us in whatever facet of our activities we undertake here, particularly for something like the estimates committee. I think that last year the estimates committee spent something like \$30,000 on getting assistance, on getting the analysis to undertake more detailed work so that the estimates committee could do its job properly. So I think that in terms of the evolution, this is certainly where we are heading. The question, I guess, for members will be: do they think this is the right time? Something exciting might happen in about 165 days from now. I think this is the perfect time to set this up and to have it ready for the upcoming election.

In terms of support functions for all members, the PBO would provide policy costings on a request by a member of the Assembly. During the pre-election period it would provide policy costings on request by an authorised member of a parliamentary party or an independent member of the Legislative Assembly. It would provide members with support on, for instance, analysing the budget papers. It would provide support to any of the committees, whether standing or select, to assist them in their functions. It could also undertake general research and analysis of budget papers and financial policy settings.

What the bill proposes is that the PBO become an officer of the Assembly to guarantee that independence. The bill has in it a range of safeguards to ensure a robust appointment process and, if necessary, a dismissal process for inappropriate behaviour. In particular, it provides for protection of

confidential information so that the PBO can go to Treasury or various departments to request information about particular services, and that request must remain inside the appropriate service.

We are approaching a period where the services of a PBO would deliver maximum value. I believe that it would be appropriate to pass this bill in June which, of course, would be the budget sitting itself. I do not expect that the PBO would cost a great deal. One of the provisions of the bill is that the PBO would be appointed for a period of up to four years. In effect, you could have a PBO for a whole term. You could find somebody who gets experience at looking at the four budgets that lead up to the next election. That would be useful in terms of continuity. The act provides for the PBO to be appointed for potentially up to two terms.

The explanatory statement just gives the overall arrangements about how it would work. We have relied very heavily on the federal legislation which seems to be working very well. What it does is give the PBO protection. What it does is give ordinary members protection. What it does is give the confidentiality that is required to make this work. I commend the bill to the Assembly.

Appendix D SUBMISSIONS

Submission No. 1	ACT Government
Submission No. 2	Mr Stephen Bartos

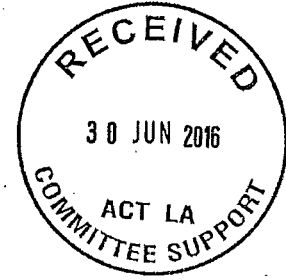



SIMON CORBELL MLA
DEPUTY CHIEF MINISTER

Attorney-General
Minister for Health
Minister for the Environment and Climate Change
Minister for Capital Metro
Minister for Police and Emergency Services

Member for Molonglo

Mr A Snedden
Secretary
Select Committee on the Legislative Assembly
(Parliamentary Budget Officer) Bill 2016
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601



	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	1
DATE AUTH'D FOR PUBLICATION	7 July 2016

Dear Mr Snedden

Inquiry into the Legislative Assembly (Parliamentary Budget Officer) Bill 2016

Thank you for the opportunity to provide a submission to the above Inquiry. The Government's views are attached.

I look forward to the outcomes of the Committee's deliberations.

Yours sincerely


Simon Corbell MLA
Acting Treasurer

30.6.10

ACT LEGISLATIVE ASSEMBLY

Phone (02) 6205 0000 Email corbell@act.gov.au



@SimonCorbell



simon.corbell

ACT Government Submission to the Inquiry into the Legislative Assembly (Parliamentary Budget Officer) Bill 2016

The ACT Government is pleased to have the opportunity to provide a submission to the Select Committee of the Legislative Assembly appointed to conduct the above inquiry.

The Government understands that the Bill would establish a Parliamentary Budget Office (PBO) to provide Legislative Assembly members and Committees with the following services:

- preparing, outside pre-election periods, policy costings for MLAs;
- during pre-election periods, preparing policy costings for political parties or independent MLAs;
- preparing advice for MLAs on budget papers;
- preparing submissions to Assembly committee inquiries, on request of the committee; and
- initiating research into the budget papers and fiscal policy settings.

The Government is sympathetic with the objectives of the Bill. However, the Government is of the view that the ACT Legislative Assembly is too small to sustain a PBO of the size that would be needed to perform the functions set out in the Bill. Importantly, there are a number of constraints which would render the PBO, as proposed, an impractical solution to the problem.

Background

Current provisions

Policy costings

Under the *Election Commitments Costing Act 2012* (ECC Act), Treasury can be requested by political parties or MLAs to provide a costing of a policy proposal during an election period. The proposal must be publicly announced as an election commitment and Treasury must make its costing public. This service was used extensively in the lead up to the 2012 election.

The Government acknowledges that the proposed legislation would provide a more extensive policy costings service, with the PBO conducting costings outside of election periods and also in confidence.

Budget analysis

A consultant review of the Budget is conducted each year to assist the Assembly's scrutiny of the Budget. This practice follows the adoption of a recommendation from the 2009 Standing Committee on Administration and Procedure inquiry into "The Merit of Appointing a Parliamentary Budget Officer". That inquiry looked at whether a PBO could "strengthen the capacity of the Assembly to hold government to account by increasing transparency of its fiscal planning framework and improve scrutiny of the estimates process". It didn't address the possible function of providing policy costings.

The Government acknowledges that the proposed PBO would provide a greater service in being able to respond to MLAs' queries on budget papers, but would not in itself increase transparency and would significantly duplicate the estimates process.

Other jurisdictions

The ACT is not out of step with the other jurisdictions in Australia, particularly the other small jurisdictions. Only the Commonwealth has a PBO of the nature of that proposed in this Bill. NSW has a non-permanent PBO, which operates only during election periods. As at 22 June, Victoria had a Bill before its parliament to establish a PBO that would also be a permanent facility.

A summary of the provisions in all jurisdictions is provided at the attachment.

The case of the NSW PBO is of particular note. The NSW Office began as a permanent full time facility with three main functions, namely:

- policy costings during election periods;
- policy costings outside of election periods; and
- budgetary and fiscal analysis.

After two years of operation, its role was narrowed to concentrate on policy costings only and its period of activity changed to election periods only. The changes were in response to a parliamentary inquiry¹, which considered, among other things, whether the other roles of the PBO were being undertaken by other parts of government or the parliament. The inquiry found that the role of budgetary analysis, in particular, was duplicated by several avenues, not least the Budget Estimates process. The report also highlighted the role of Auditor General and the Public Accounts Committee in providing scrutiny of public spending and the research staff that members of parliament had available to conduct their own budget analysis. The same avenues of budget scrutiny exist in the ACT system.

¹Parliament of New South Wales Joint Select Committee on the Parliamentary Budget Office, Report 1/55, Dec 2011

The NSW inquiry concluded that the benefits of a permanent PBO did not outweigh the cost and it recommended the non permanent facility that is currently in operation, focussed on the core function of providing policy costings.

Workload and expertise

The Bill makes no reference to the size of the PBO. Overall, the size of a PBO in the ACT would need to be

- proportional to the size of the Legislative Assembly;
- sufficient to manage the workload; and
- sufficient to achieve the necessary expertise.

The Government considers that in a jurisdiction the size of the ACT, it would not be possible to have a PBO of sufficient size to manage the workload of policy costings, in particular, and to achieve the necessary expertise, while remaining proportional to the size of the ACT Assembly.

Proportionality

The Commonwealth Parliamentary Budget Office has a staffing level of around 45², or approximately 1 staff member for every 5 members. The NSW PBO had a peak staff complement of 16 for the last NSW election (March 2015)³. This represented a similar ratio of staff to parliamentary members (just under 1:6). If we use the 1:5 ratio as a guide, it would yield a permanent PBO of around 5 staff in the ACT. This size of office might be able to manage the workload of requests in non-election periods, but could not do so during costing periods. It may also have difficulty attracting sufficient expertise across the range of issues faced by the ACT.

Achieving expertise

Conducting policy costings and undertaking budget analysis requires an understanding of the subject matter. The Finance and Budget Division in the ACT Treasury stream of the Chief Minister, Treasury and Economic Development Directorate, has a staff complement of around 40, while the Commonwealth PBO, as above, is around 45. These size teams enable the development of expertise in sectoral areas such that the staff can undertake costings and budget analysis intelligently and efficiently. Indeed, the Finance and Budget Division is structured on the principle of expertise by being organised into areas matching the sectoral organisation of the ACT Public Service.

² Portfolio Budget Statements 2016–17, Parliamentary Budget Office

³ Parliamentary Budget Office, 2015 Post-Election Report, www.parliament.nsw.gov.au

The ACT Legislative Assembly will have just 25 members after the 2016 election. While the Assembly might be small, the sectors in which government is involved are large in number and diverse. There are 28 Ministerial portfolios in the current government, with some of these portfolios covering multiple areas of responsibility (eg, "Housing, Community Services and Social Inclusion"). A PBO would need to be knowledgeable in all these areas. This would be very difficult to achieve with a permanent staff number that would have to remain proportional to the number of MLAs.

Managing the workload

Managing the peak workload of the election periods would be a particular problem. The experience of the 2012 election was that the Finance and Budget Division of Treasury was almost fully occupied on policy costings during the caretaker period. The Division was able to perform this role as it had the established expertise in the breadth of sectoral issues involved in the costings. The PBO would need to be able to gear up staff numbers and expertise to a similar level every four years. It would be difficult to attract appropriately qualified staff for short term work. Further, any investment that the PBO would make in these staff would also be most likely lost as the gap of four years between elections would mean it unlikely that any of these staff would be available for multiple election costing periods. A non-permanent PBO would face the same gearing up issues.

Alternatives

The Government would be happy to work with the Assembly on alternative, more practical options that meet the core objectives.

Attachment

Parliamentary Budget Offices

Jurisdiction	Yes/No	Notes	Pre election budget update issued
Commonwealth	Yes	Provides costings for political parties both during and outside caretaker periods. Also conducts research and analysis of budget and fiscal settings.	Yes
NSW	Yes	Provides costings of election policies only in the lead-up to NSW general elections. The next NSW election is scheduled to occur in 2019, and the Parliamentary Budget Office is expected to remain inactive until September 2018.	Yes
Victoria	Proposed	Bill currently before the Parliament to establish an Office.	Yes
Queensland	No	No information found about process for costing of political party commitments.	No information found
WA	No	Under Treasurer provides formal election commitment costing service to the political parties during the caretaker period.	Yes
SA	No	Under Charter of Budget Honesty Act Secretaries to Treasury and Department of Finance may be requested to cost election commitments during the caretaker period.	Yes
Tasmania	No	Under Charter of Budget Responsibility Act, Dept of Treasury & Finance can be requested to provide election costings for political parties.	Yes
NT	No	No information found about process for costing of political party commitments.	Yes
ACT	No	Election Commitment Costings Act 2012 enables Under Treasurer to cost party election commitments before and after polling day.	Yes

Submission

Select Committee on the *Legislative Assembly*
(Parliamentary Budget Officer) Bill 2016

Stephen Bartos
former Parliamentary Budget Officer, NSW

July 2016

Introduction

This brief submission is provided to assist the Committee in its consideration of the *Legislative Assembly (Parliamentary Budget Officer) Bill 2016* .

The submission is provided in a private capacity; it is however informed by my work on governance, budgeting and fiscal management, and in particular my experience serving as NSW Parliamentary Budget Officer in 2014-15.

My understanding is that the committee has been provided with my report to the NSW Parliament at the conclusion of my term as PBO, the response to that report, and an earlier report I prepared for the Business Council of Australia in 2011 on the merits of moving to an independent budget scrutiny body in the Commonwealth. This submission adds some brief comments to those materials.

The value of an independent PBO

My 2011 report outlined some of the reasons why governments at national and sub-national level worldwide were instituting independent bodies to advise legislatures on budgets and estimates and/or provide external assurance on government's fiscal policies and budget numbers. It provided examples of a number of these around the world. Since that time the number of such bodies has grown exponentially. They exist at not only national but at sub-national levels – for example, the California Legislative Analyst's Office, the City of New York's Independent Budget Office, Fiscal Accountability Office of Ontario.

This trend is based on the international experience that having an independent budget office leads to significant improvements in the performance of legislatures in their law making and scrutiny functions and of political actors in developing well costed and realistic policies. There is no reason to suppose the ACT would not also experience similar benefits were it to introduce a PBO

Although outside government control, such bodies frequently have direct benefits for government itself. Anecdotally it would appear that having an independent, outside body, capable of providing an alternative to the traditional central budget agency, can be an incentive for that central agency to develop better and more implementable policies, improving governments' capacity to govern.

Although the ACT is a small jurisdiction, the benefits of an independent budget officer would still flow through, in terms of better priority setting and a more sustainable fiscal position.

Lessons from the NSW and Commonwealth experience

Confidentiality

One of the most important aspects of the NSW Act was the capacity of the major parties to submit policies for costing in the knowledge that the results would be confidential unless and until the parties released the policy. This contrasts with the Commonwealth arrangement. For the 2016 election, the Commonwealth PBO provided policy costings only for the Greens and one costing for one independent. No costings were done for the opposition or for any other independents.

The reasons for this are not difficult to discern. The Greens had previously had their policies costed, so had nothing to lose by having them published. For any other party, the risk of submitting a policy would be far too great because under the Commonwealth legislation both the costing request and the costing have to be published. If a policy is stupidly unaffordable, that is simply bad luck for the party concerned, it is published anyway and the party is subject to ridicule. That is a powerful disincentive for parties to submit policies for costing.

By contrast the NSW legislation provides that a policy costing is released only if the policy to which it relates is released. In practice, this allows parties to test policies, see if they are affordable, and then release only those that are compatible with good fiscal management. This was a major strength of the NSW PBO in assisting both major parties prior to the 2015 NSW election. More policies were costed, provided to the parties, and then not pursued, than were actually released. This is a boon for democracy – realistic, viable policies are put to the electors.

One weakness of the ACT PBO Bill as currently drafted is that it appears based more on the Commonwealth than the NSW model. This will potentially limit the usefulness of a PBO should it be introduced in the ACT. My understanding of the Bill currently before the Victorian Parliament is that it has incorporated the best of both the Commonwealth and NSW approaches, and it may be the preferable model to pursue were the ACT to go down this path.

Transparency

As noted above, the NSW arrangements were highly confidential prior to the release of a policy. When a policy is released, however, the costings should also be released in full. This applied in NSW. This provision for full disclosure means the PBO is less liable to be misrepresented; that is, political parties cannot make claims that the PBO has assured it a policy is fully costed and reliable if in fact this is not the case. I note that in the most recent Commonwealth election the Commonwealth PBO has been cited as a source of costing authority without the actual costing being released – this puts the PBO in a difficult position.

I suggest that any ACT legislation should include a provision similar to that in NSW: if a policy is costed by the PBO and then released, the costing itself ought also be made public.

Reliability

There is a difference in practice between the Commonwealth and NSW PBOs. The Commonwealth PBO assigns reliability ratings to costings. I took the view in NSW that all costings would be reliable and a fair representation of the impact on the forward estimates if the policy concerned were implemented. In other words, if the party concerned were to be elected and the policy introduced forthwith, the forward estimates update would be identical to the PBO costing (noting that the longer the time delay, the more likely the costing would be updated for other parameter movements).

In cases where reliable costings were not possible – for example in relation to the impact on the NSW economy of proposed changes to electricity providers and markets in the State - instead I provided the parties (and subsequently released publicly) discussion papers outlining the different policy issues and the potential implications for the NSW Budget. In my view this is preferable to issuing a costing rated as having low reliability.

Should the ACT “piggyback” on the Commonwealth PBO?

It was suggested to me by a consultant, outside government, that rather than a dedicated State resource, NSW should ask the Commonwealth to undertake the PBO role. Based on my experience, that would have been impossible. State and Territory budgeting and financial management are fundamentally different; the major issues affecting the Commonwealth budget are income taxes (revenue) and social security payments (expenses), both of which are less relevant in a State context. Management of the balance sheet and the capital side of the budget are far more important for a State or Territory – the Commonwealth has relatively little own purpose capital expenditure.

While there is some overlap in terms of generic budgeting skills, there is a depth of subject matter expertise that the Commonwealth PBO simply would not possess in relation to a State or Territory if it were asked to undertake that role – they would have to second in to their office people with this experience, and the net cost would be higher.

Although the ACT has some arrangements for sharing resources with the Commonwealth (eg the Ombudsman) it would not be workable for a PBO.

Options

There are options other than having a large PBO fully resourced for all the proposed functions. Other options that the committee could consider might include:

- Employment of an independent budget adviser with a small staff to provide advice on budget matters, and give the Assembly external assurance of costings, with the majority of work on costings continuing to be done by the ACT Treasury. Such an adviser should have the ability to second staff from relevant ACT Directorates for specific budget related tasks (for example, advising an Assembly committee on budget implications arising from an inquiry).
- An even smaller office to perform the function of acting as a conduit between Assembly members and the resources of the ACT CMTD and other directorates to obtain budget information on a confidential basis – that is, a mechanism for Assembly members to obtain information with an assurance that it has not been passed on to a government Minister at the same time

Access to information from other agencies

This was a crucial success factor in NSW, and the ACT PBO Bill rightly makes provision for a proposed ACT PBO to have such access. If a more low key option of a budget adviser of some sort were to be pursued, that person and their office would be far more effective with a legislated regime for access to information.