



PARLIAMENTARY BUDGET OFFICE

NSW Parliament • Parliament House, Macquarie Street Sydney NSW 2000

Parliamentary Budget Office

2015 Post-election Report

11 June 2015

Preface

Section 15 of the *Parliamentary Budget Officer Act 2010* (the PBO Act) requires that the Parliamentary Budget Officer report to the Public Accounts Committee as soon as practicable after the State general election.

Under the Act my post-election report may include recommendations on the operational arrangements and activities of the Parliamentary Budget Officer in respect of future general elections.

I have interpreted “as soon as practicable” to mean soon after the election of members of the Public Accounts Committee by the new Parliament.

The key message of this report is that the process of costing policies for both Government and Opposition, and reporting on the aggregate impact of those policies in Budget Impact Statements, was highly successful.

The costings were reliable, accurate and produced within the timeframes provided in the PBO Act. Each costing included an information section to help explain assumptions and background. Both parties made extensive use of the PBO to have different options costed, thus helping them choose the most cost effective policies to put to NSW voters.

This positive result would not have been possible without the assistance of a large number of staff of NSW government agencies – NSW Treasury in particular – and the enormously talented and dedicated staff of my office.

I would also like to thank the Presiding Officers for their continued support for the work of the PBO, and the staff of the parliamentary departments who have been unfailingly welcoming and helpful to me and my staff.

Stephen Bartos

Parliamentary Budget Officer

June 2015

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Executive summary and recommendations

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. The benefits to NSW are large:

- Both parties proposed policies during the election campaign that would have improved NSW's budget position by several hundred million dollars;
- If either party won government there would be no post-election budget surprises or "black holes": both parties had an accurate and independent estimate of the impact of their policies on the budget;
- Both parties refined and improved their policies in response to costing information.

The key components of this successful result were:

- **Confidentiality.** The Parliamentary Budget Officer (PBO) and NSW government agencies kept costing information on policies confidential, enabling parties to refine policies prior to public release.
- **Expeditious and accurate costings.** Policies were costed quickly – although there is still room for improvement. Our report makes recommendations to speed up the process.
- **A responsive process.** The PBO received 476 costing requests over 3 months. By necessity, the work of the PBO was adaptive, and flexible. There was regular and prompt communication between the parties, PBO and agencies.

One of the indicators of success was the large number of costings not published. Of 476 policies submitted, only 179 were announced. Overwhelmingly this was due to different ideas and options being tested in development. Both parties used the process in this way. The availability of independent and reliable information on costs helps parliamentary leaders determine what policies are most cost effective – that is, deliver the best outcomes for the lowest costs. Costing policy options is a useful PBO role and helps ensure fiscally responsible policies are presented to voters.

The lessons learned from 2014-15 are documented and discussed in this report so as to help build further improvements in future years.

Some aspects need to be retained: highly competent staff with a good mix of complementary skills; close liaison with NSW agencies and especially NSW Treasury; responsiveness and flexibility in dealing with the parliamentary leaders' requests.

Some need improvement: sections of the *Parliamentary Budget Officer Act 2010* could be clarified; early submission of costings by the parliamentary leaders should be encouraged; NSW agencies' timeliness in responding to information requests was patchy and could improve; disclosure of the details of decisions taken between the Half-Yearly Budget Update and the caretaker period would be helpful. The rationale for recommendations is outlined in the report.

Overall the message is that the 2014-15 PBO processes were very successful and enhance NSW' reputation for transparency and good governance.

Recommendations and findings

Recommendations for Public Accounts Committee and Parliament

Recommendation 1

The PBO recommends that the *Parliamentary Budget Officer Act 2010* (PBO Act) be amended to require NSW Treasury to publish, at the start of the caretaker period, a list of all Government decisions affecting the forward estimates taken since the Half-Yearly review and new totals for budget aggregates; and that the PBO use this as a starting point for budget impact statements.

Recommendation 2

The PBO recommends that the PBO Act be amended to remove the requirement for a Statement of Uncommitted Funds¹.

Recommendation 3

The PBO recommends that the PBO Act be amended to allow a parliamentary leader to withdraw a costed policy at any time prior to it being published by the PBO.

Recommendation 4

The PBO recommends that section 23 of the PBO Act be amended to require that parliamentary leaders notify the PBO of their final list of policies for inclusion in the budget impact statement on the ninth last day before the election.

Recommendation 5

The PBO recommends that section 16 of the PBO Act be amended to require that in the six weeks prior to the election, the head of a Government agency to respond to requests for information within 6 business days or such other period as is agreed between the head of the agency and the PBO.

Recommendation 6

The PBO recommends that section 16 (4) of the PBO Act be amended to ensure that confidentiality provisions apply to the staff of Government agencies, as well as the head of an agency.

Recommendation 7

The PBO recommends that the PBO Act be amended to require the PBO to provide a draft operational plan to the Presiding Officers with one month of appointment

¹ Note – this should also be associated with greater disaggregation of forward estimates of expenditure, to enhance transparency; see report for discussion of the issues involved.

Recommendations for future Parliamentary Budget Officers

Recommendation 8

The PBO recommends that future PBOs include a deadline in the operational plan and costing guidelines for parties to submit most of their costing requests by an agreed date – preferably one month prior to the draft budget impact statement.

Recommendation 9

The PBO recommends that future PBOs provide a running total of the cumulative impact of all costed policies for each respective parliamentary leader during February and March prior to an election.

Recommendation 10

The PBO recommends that future PBOs list, in budget impact statements, all policies that are categorised as ‘reservations’, with an additional total impact calculated for the full effect on fiscal aggregates if the policies were implemented.

Recommendation 11

The PBO recommends that future PBOs include in budget impact statements separate tables for savings measures and spending measures.

Recommendation 12

Future PBOs should seek agreement from agency heads that where an agency plans to provide a “no response” or a “more information is needed response” to the information request, such a response must be provided within 48 hours of the request being made

Recommendation 13

The PBO recommends that future PBOs provide guidelines to parliamentary leaders about the circumstances under which the PBO will make public comments about costings that have been publicly misrepresented.

Other findings and observations

- The PBO suggests that the PAC consider whether the PBO Act should be amended to reduce the number of fiscal aggregates to be reported against in the budget impact statement. The aggregates to be reported on should be: expenses, revenue, capital expenditure and net financial liabilities.
- Consideration be given to amending the PBO Act such to require the PBO to publish a costing within five working days of the public release of a costed policy (or earlier if notified by the parliamentary leader concerned).
- The PBO suggests that the PAC consult further with Government agencies and other stakeholders to consider whether election policy costings should be estimated over the entire 4 year term of Government, rather than the current forward estimates period required in the Act.
- Consideration be given to allowing the PBO to share information on costings with the Department of Premier and Cabinet for the purpose of policy implementation plans
- The PBO does not see merit in costing the full set of election policies of minor parties. However there may be merit in the PBO costing a small number of the key policies of the minor parties.
- Future PBOs should encourage parties to agree to publishing ranges for costings where there is genuine uncertainty.
- It would be helpful for future PBOs to explain the requirements of the PBO Act to agencies, particularly in relation to the PBO's legal requirement to cost any policy that a parliamentary leader has advised is a proposed policy.
- It would be desirable for the Department of Parliamentary Services (DPS) to begin the process for appointing the PBO earlier.
- The PBO considers that DPS should contact the incoming PBO as soon as possible (even prior to formal appointment) to get advertising under way for Parliamentary Budget Office staff as early as possible.
- Department secretaries should be encouraged to support secondments to the Parliamentary Budget Office in future years.

Part 1 – Lessons learned, issues and options for reform

Introduction

This report is designed primarily for accountability: to provide the Public Accounts Committee of the NSW Parliament with a report on the operations and performance of the Parliamentary Budget Officer (PBO) and Parliamentary Budget Office (the Office) for 2014-15.

It serves a secondary but important purpose: to provide a record of lessons learned from the first full operational period of a NSW Parliamentary Budget Office under the revised *Parliamentary Budget Officer Act 2010* (the Act). The lessons learned have applicability broadly to the NSW public service as well as to the next PBO.

In preparing this report the Office consulted a wide range of stakeholders both inside and outside the Parliament, including the offices of the Premier and Leader of the Opposition, a range of NSW departments and agencies that provided assistance during the costing process, and the NSW parliamentary press gallery. The feedback was universally favourable in broad terms. There were some differences of opinion among stakeholders on points of detail about recommendations for the future. These are noted in the text of this report.

In coming to a judgement on the preferred recommendations the PBO has endeavoured to assess what would best contribute to transparency, reliability and trust in the costing and budget impact statement processes, in the interests of the voters of NSW.

Costings

Introduction

The policy costings produced by the Parliamentary Budget Officer (PBO) were well received and both leaders' offices highly commended the respective costings they received. Feedback post-election suggests that the costings were accurate: that is, they provided a reliable guide to the impact of the policy on the forward estimates². There was one exception (discussed later) where an agency suggested a costing was inaccurate because the PBO accepted the relevant leader's policy assumption that costs could be absorbed internally, something the agency disputed.

A number of factors contributed to this positive result:

- The Parliamentary Budget Office (the Office) team mix with different perspectives to bring to bear on the policies concerned (economists, accountants and policy experts)
- Use of templates and agreed methodologies for costing
- Small size and cohesiveness of the team (co-location of members, regular meetings, frequent exchange of information on costings both formally and informally)

² Note that over time the PBO estimate of the costs or revenue of a policy may diverge from the actual outturn expenses or revenue after it is implemented. The longer the timeframe over which the policy is implemented, the more likely it will be that other external factors (such as changes in population, inflation, economic growth, environmental conditions and so on) will change the estimates.

- Establishment of good relationships with NSW agencies
- Excellent working relationship with Treasury
- Rigorous quality assurance processes to ensure that every PBO costing had been checked thoroughly before being sent to the leader who had requested the costing
- Use of discussion papers where a costing could not be done.

There were some queries and comments raised post-election with the PBO about how the policy costing process could be improved in future. These are discussed further below.

Establishing a firm start point

There is no guidance provided in the PBO Act on the starting point from which, for the purposes of the budget impact statements (BIS), the PBO should calculate the aggregate impact of the Government and Opposition policies on the budget estimates. Taking the Half-Yearly Review as the start point would be potentially misleading because governments can, and generally do, make decisions that affect the forward estimates in the period between the publication of the Half-Yearly Review and the start of the caretaker period. As noted in the Budget Impact Statements: “it is part of the normal business of government, and has been under previous governments, that decisions affecting the forward estimates can be made prior to the caretaker period”.

The PBO took the view, with the support of the government and the NSW Treasury, that in the interests of transparency it would be desirable to publish the impact of post Half-Yearly Review decisions in the Budget Impact Statements. This was done.

The impact of such decisions in 2015 was relatively minor, and some of the larger components such as drought relief had bi-partisan support. They still were a source of concern for the Opposition. When advised of the impact of these decisions the Opposition put forward a policy option to reverse 75 per cent of their budget impact on the grounds that “much of this expenditure is on policies that are effectively election commitments” (ref. election policy costing request “Reallocate Coalition budget commitments” of 22 March on the PBO website). The Opposition argued that the half-yearly review “is intended to provide a common and transparent baseline for both major parties against which election commitments are to be made”.

A further concern was that the estimates for post Half Yearly Review decisions were received by the PBO in the penultimate week before the election. This was later than had been hoped, and caused some difficulties including having to revise the numerous spreadsheets that fed in to the budget impact statements quickly, with rather less time for checking than would have been preferred. It was then necessary to update the statements themselves and advise the Government and Opposition of the new starting point. This meant the numbers came as late news to the Opposition.

There are several options for dealing with this issue, as outlined in the following table:

Option	Advantages	Disadvantages
1. Use the Half Yearly Review estimates as the start point, no further updates	No additional workload for NSW Treasury or for PBO.	Less transparent. Creates an incentive for the government to load policy decisions into the January and February before an election. Gives government a different starting point to the Opposition (only government knows the impact of its post Half-Yearly Review decisions).
2. Publish Budget Impact Statements including the total impact of Half Yearly Review decisions as provided to the PBO by Treasury. No detailed breakdown of decisions included.	The approach adopted in 2015. More transparent. Provides the parties with the same start point.	Timing remains uncertain. Potential for government to game the system by including election promises amongst pre-caretaker decisions, allowing them to be announced without affecting the forward estimates and so outside PBO scrutiny.
3. At the start of the caretaker period NSW Treasury to publish a list of all decisions affecting the forward estimates taken since the Half-Yearly Review, and a new total for budget aggregates as a result (updated only for the decisions). PBO to use this as starting point for Budget Impact Statements.	As with option 2, with an additional level of transparency. More certainty in timing.	Government has more up to date information on fiscal outlook, and scope for new commitments as a result of changed economic conditions, than does Opposition.
4. At the start of the caretaker period NSW Treasury to publish a budget update including decisions since Half-Yearly review and latest estimate of key budget aggregates.	As with option 3. A very high level of transparency and disclosure. Puts all parties on an equal footing pre-election.	A minor additional workload for Treasury (the PBO has been advised that NSW Treasury as a matter of course monitors major shifts in economic conditions and their implications for the budget).
5. At the start of the caretaker period NSW Treasury to publish a full budget update, including its latest estimate of all budget aggregates updated for parameter movements. This would be equivalent to the Commonwealth government's Pre-Election Fiscal Update (PEFO). PBO to use this as the starting point for the BIS.	As with option 4. Would provide both parties the best possible data on latest state of NSW budget.	Higher workload for Treasury. Questionable value in conducting a full update so close to Half-Yearly Review.

Of these, option 4 seems the best approach. It would require amendment to the PBO Act.

Recommendation

The PBO recommends that the *Parliamentary Budget Officer Act 2010* (PBO Act) be amended to require NSW Treasury to publish, at the start of the caretaker period, a list of all Government decisions affecting the forward estimates taken since the Half-Yearly review and new totals for budget aggregates; and that the PBO use this as a starting point for budget impact statements.

Uncommitted funds and policies that the leaders assumed could be absorbed

Adoption of options 3 to 5 above could also be accompanied by discontinuation of the present arrangements for publication by NSW Treasury of a Statement of Uncommitted Funds.

Section 24 of the *Parliamentary Budget Officer Act 2010* states:

The Secretary of the Treasury is to publicly release, at the same time as the public release of the pre-election half-yearly budget review, a statement of the amount of uncommitted funds that are available (within the revised estimates of recurrent and capital expenditures) to meet any future expenditure commitments for the General Government Sector for the period to which the review relates.

In practice, the PBO found that the Statement of Uncommitted Funds was not a useful construct. A number of policies were submitted to the PBO for costing that fell well within the envelope of uncommitted funds. In almost every case where a department was asked for information on such policies the amount of uncommitted funding shown in the Statement was no longer current³. The approach the PBO took was that unless a strong case could be made that funds were no longer available the PBO would accept a leader's assumption that a policy could be funded from uncommitted funds. This was however a) difficult to establish and b) led some agencies to a firm view that the costing notes should include a qualification that the policies concerned, if implemented, would require agencies to drop other high priority spending. In effect, the discussion between the PBO and agencies on whether a policy could be funded from existing resources came down to a judgement on whether this would be feasible (see next section of this report), and was not assisted by the numbers published in the Statement of Uncommitted Funds.

This was more of a problem in relation to Opposition policy costing requests for the obvious reason that agencies' forward spending plans were better aligned to current Government policies than Opposition policies. Had the Opposition been elected to government there would likely have been significant differences of opinion between incoming Ministers and departments in relation to policies the Opposition had proposed to be funded out of uncommitted funds.

The PBO does however note that an important function of the Statement of Uncommitted Funds from the perspective of the Opposition was that it disaggregated spending lines and so gave an indication of programs where there was scope for reallocation. It is true that there is less

³ The relevant section of the PBO Act appears to be based on an assumption that governments and agencies make no commitments between the time of the Half-yearly review and the election, whereas clearly they do.

information on a program or activity basis in NSW budget papers at present than is provided in most other Australian jurisdictions. The PBO notes that a project underway at present in NSW Treasury aims to improve the disclosure and transparency of budget information. On the assumption that this proceeds, this will strengthen the case for removal of the Statement of Uncommitted Funds – a budget update prior to the election, at the start of the caretaker period, would provide an indication of the areas where there is prima facie scope for re-prioritisation.

Recommendation

The PBO recommends that the PBO Act be amended to remove the requirement for a Statement of Uncommitted Funds.

Funding from existing resources

A related problem arose in relation to policies that the leader concerned indicated could be funded by the agency concerned from within existing resources, or absorbed. In most cases the agency concerned strongly objected to this assumption. The PBO did test the practicality of absorption, and for a policy where it was self-evidently a very small additional expense the PBO accepted the leader's assumption. Agencies often disagreed with this approach.

One suggestion made by an agency representative was where a policy proposed costs be absorbed, the leader should be required to nominate what activity the agency concerned would cut. The PBO does not consider this a practical suggestion.

It is not easy for a Minister, let alone an Opposition spokesperson, to uncover areas of low priority expenditure in their portfolio. A Minister may have a general sense, observing patterns of expenditure over time, of the scope for reallocation of priorities, while still not having enough detailed information to be able to nominate specific cuts. This information might be inside the agency, but is unlikely to be volunteered. It is available to Ministers should they ask for it, but a Minister has to know what questions to ask⁴.

It is significantly more difficult for an Opposition to nominate specific cuts, with virtually no detailed information at program or activity level on the public record to which an Opposition spokesperson can refer. It would be highly unlikely that their counterpart Minister would agree to the agency supplying it.

A large number of policies announced by the government were proposed to be funded from existing resources. Although leaders are only required under the PBO Act to have costed policies "that are likely to impact on the current and relevant forward budget estimates" the Opposition considered that the arrangement gave government an unfair advantage. The Opposition did not have the same access to Treasury as did government to confirm whether policies could in practice be funded from

⁴ Like any generalisation this has exceptions; Ministers and departments can at times work together to find savings. It is however rarer for a Minister to volunteer to find savings to fund a new initiative in a different Minister's portfolio: that sort of reallocation of priorities is more likely to be done at a Cabinet level.

within the forward estimates. As a result, even where the Opposition leader proposed costs should be absorbed he had to seek a PBO costing to confirm this was possible⁵.

The appropriate fiscal measures for PBO reporting

Section 19 of the PBO Act provides that:

- 2) *A budget impact statement is to list the relevant costed policies and show:*
 - (a) *a summary of the assessed financial impact of each costed policy, and*
 - (b) *the total net financial impact of all the costed policies, on the current year's State budget and on the forward estimates for the period to which the pre-election half-yearly budget review relates.*
- (2A) *The budget impact statement is also to show the impact of all the costed policies on the following financial indicators:*
 - (a) *general government sector net operating result, being the difference between expenses and revenues from transactions for the general government sector,*
 - (b) *general government sector capital expenditure,*
 - (c) *general government sector net lending/borrowing, being the financing requirement for the general government sector that equals transactions in financial assets less transactions in liabilities,*
 - (d) *general government sector net financial liabilities, being the financial obligations of the general government sector (including debt, unfunded superannuation liabilities, insurance liabilities and employee related liabilities) less its financial assets (including cash and investments),*
 - (e) *total state sector net financial liabilities.*

It may be that the workload and presentation implications of Section 19 (2A) were not appreciated when this section was drafted. It is not possible to calculate the total impact of the costed policies on the five fiscal indicators set out in Section 19 (2A) without first determining the impact on each of the indicators of each of the policies: the total is the sum of each individual impact. As a result, the PBO had to determine six⁶ separate numbers for every policy costed. This requirement for six numbers per costing was repetitive and made the costings harder to explain and present.

In essence, the key fiscal indicators that matter to voters concerned about fiscal management are how the proposed policies of each party affect forward estimates of:

- Expenses
- Revenues
 - And the net impact of expense and revenue measures, the operating result (a simple calculation, with the net result shown in Budget Impact Statements)

⁵ Reasons why a policy could not be absorbed might include existing contractual commitments, lack of funding in forward years over the duration of the policy, conflicts with agreements with other levels of government and so on. The PBO did not accept agency protests that absorption would make their work harder or require discretionary activities to be discontinued as valid reasons.

⁶ Although there are only five sub-sections, net operating result (2A)(a) requires the PBO to estimate two different numbers, expenses and revenue. Policies can include both – especially revenue policies, which often involve expenses in administration.

- Capital expenditure (or, conceivably, savings from discontinuing capital projects already in the forward estimates)
 - These affect the balance sheet, converting cash into other assets or vice versa, but do not affect the operating result
- Debt – noting that ‘net financial liabilities’ is a better measure to use than ‘net debt’ for reasons set out in the NSW Budget Papers:

Net financial liabilities represent total liabilities less financial assets, other than equity in publicly owned corporation. It is a broader and more accurate indicator than net debt of a jurisdiction’s fiscal position, because it includes significant liabilities other than borrowings (for example, accrued employee liabilities such as superannuation and long service leave entitlements).⁷

It would be possible to reduce the complexity of the costing process if the Act were amended to reduce the number of separate fiscal indicators to be reported against. For example, costings for each individual policy could report the impact on: expenses, revenue, capital expenditure and net financial liabilities (noting that the impact on the operating result would also be reported in the budget impact statement). Reporting on policies with an impact on total state sector liabilities only (likely to be few) could be on a by exception basis.

Other costing matters

Costing requests should be able to be withdrawn at any time prior to publication

Both parties submitted a number of costings requests to the PBO that were not included in their final list of policies for inclusion in the budget impact statement (BIS). Such policies accounted for just over half of all costing requests received by the PBO. This is a typical and normal process, as policies will be refined and further developed in light of costing information provided by the PBO and as the election campaign unfolds.

Section 20 of the Act allows a parliamentary leader to withdraw any election costing request before the election policy costing is provided to the leader (Section 20 (2)). In practice, the leader may wish to withdraw the request after the costing has been provided to the leader. At present, such withdrawals are done by default under the Act and quite late in the process by the leader not including the policy in its final list of policies for inclusion in the BIS.

Both parties developed and used an informal process where they iteratively informed the PBO in writing of costed policies that would not be included in their final set of policies. It may improve the operation of the Act if Section 20 allowed a leader to withdraw any costed policy at any time prior to it being published by the PBO, by amending Section 20 (2) of the Act.

Recommendation

The PBO recommends that the PBO Act be amended to allow a parliamentary leader to withdraw a costed policy at any time prior to it being published by the PBO.

⁷ NSW Government, *Budget Statement 2014-15 - Budget Paper No. 2*, pp. 4-19, 20.

Submitting costing requests to allow the PBO sufficient time to do costings

The 2015 NSW Election was the first time an Opposition party has used a PBO to cost its policies. Labor submitted most of its policies between December and February, allowing the PBO good time to cost these policies. However, some policies were also submitted in the final few days before the BIS was released.⁸

In both the 2011 and 2015 elections the Government has chosen to have their policies costed first by Treasury, and then submit the policies to the PBO together with the Treasury costing information once complete. This process reduces an unnecessary workload for the PBO. It is also understandable a Government will estimate the expected cost of its policies prior to submitting them to the PBO.

However, in practice, this process can result in delays in the PBO receiving Government costing requests. For example, in the 2015 election 90 per cent of the Government requests to the PBO were received in March. Whilst quite late, this timing was an improvement on the 2011 election where the Government submitted all its costing requests on or after March 10⁹.

A good working relationship between Treasury and the PBO ensured an effective process in costing government policies. The PBO conducted the costing of government policies according to the same methodologies used for Opposition policies – independently verifying the information required to undertake the costing, and where insufficient information was available from NSW Treasury, contacting the relevant NSW government agencies to obtain the necessary information. The office did not merely verify the Treasury costing, but examined the proposals and costed them independently.

In future elections, parties may have incentives to submit policies late to reduce the capacity of the PBO to accurately scrutinise and cost them.

Section 19 (1) presently covers this issue and says ‘requests are to be made **in sufficient time** before the State general election to enable the parliamentary leader’ to have all its policies costed by the PBO that are likely to impact the relevant budget forward estimates. It may be desirable to consider enhancing Section 19 to better ensure the PBO has sufficient time to do its costing analysis in future elections.

Several options for reform could be considered:

⁸ Most Labor policies submitted after February were either refinements on existing policies or relatively straight forward capped funding policies. An Opposition will often have incentives to submit policies to the PBO as early as practicable in the process to enable the party to work out the cost of policies and refine them, and because the Opposition does not have access to Government agencies to cost its policies.

⁹ Noting that no Opposition policies were lodged in 2011.

Option	Advantages	Disadvantages
1. No change to the Act, but with the next Parliamentary Budget Officer emphasizing with parties the importance of submitting policies in sufficient time before the election. ¹⁰	Minimalist approach. Allows parties the greatest flexibility with their costing requests and election campaigns.	May not allow the PBO sufficient time to properly cost policies in future elections. May not induce behavioural change so parties submit policies earlier.
2. Amending the Act to require a Parliamentary leader to have submitted all policies for costing no later than a certain period, say one month, before the draft (BIS) is due. The Parliamentary Budget Officer would retain discretion to accept and cost requests submitted after this date. ¹¹	Likely to induce desirable behavioural change with parties submitting most of their costing requests earlier. Better ensures PBO has sufficient time to complete its costing work.	May motivate, depending on the circumstances, a party to boycott the PBO process.
3. Require a political party to reveal on a policy's public release whether it has been costed by the PBO. ¹²	May encourage parties to submit their policies for costing to the PBO well before their public release.	May encourage parties to delay the release of their policies until late in the election campaign.
4. In the year of the election require a party which has submitted an election policy for costing to Treasury to submit that policy at the same time to the PBO.	Brings the PBO into the costing process much earlier on, resulting in improved transparency, and potentially better costing analysis.	Has the potential to cause an increased, and possibly an inefficient, work burden for the PBO.

On balance the PBO prefers option 1: not amending the Act but strengthening the expectation that costings will be submitted earlier.

This would be given effect by including a deadline in the operational plan and costing guidelines for parties to submit most of their costing requests, with later requests to be submitted only on a 'by exception' basis. The precise date would be established during consultations on the Operational Plan, to lock both parties in to agreement on what would be achievable (this would not be legislated, so it would be persuasive but not binding). Ideally the date for submission of policies would be at least one month prior to the draft budget impact statement.

¹⁰ The PBO operational plan and costing guidelines could be augmented reflecting an expectation parties would submit the majority of their policies at least one month prior to release of the draft BIS.

¹¹ Section 19 (3) could be added to the Act to reflect such an amendment. Such an amendment would create an expectation parties are required to submit the bulk of their election policies for costing by the due date.

¹² Such a requirement is being considered by South Australia in setting up their PBO.

If this approach does not work in 2018-19, the parliament should consider at that time whether the Act needs to be amended.

Recommendation for future PBO

The PBO recommends that future PBOs include a deadline in the operational plan and costing guidelines for parties to submit most of their costing requests by an agreed date – preferably one month prior to the draft budget impact statement.

Changing the period over which costings are estimated from 3 years to 4

For the 2015 election, policy costs were estimated over the period 2014-15 to 2017-18 which corresponds to the forward estimate period in the latest Half Yearly review. The impact of policies was, in practice, costed over 3.25 years from April 2015 to 30 June 2018.

It has been suggested policies should be costed for a further year (i.e. to 30 June 2019 with the most recent election). The advantages of such an approach are:

- The cost of the policy better matches the four year election cycle.
- The cost of the policy will match the four year period of the next budget to be produced after the election.
- It provides better information on the longer term costs of the policy by including an extra year of information, which may be especially helpful where policies are back-loaded with a significant increase in costs in the fourth year.

The disadvantages of such an approach are:

- It may slow down the costing process, and the speed with which agencies can respond to information requests, especially where agencies have not yet fully prepared and updated their information and models for the 2018-19 financial year to feed into the 2015-16 budget process. This could create an additional work burden for agencies with costing requests, especially when received early in the PBO process such as November or December.
- The Half Yearly Review does not have a base number for 2018-19, presenting a problem in producing the starting point fiscal aggregates for the BIS for 2018-19. This problem could be overcome by the BIS only requiring an estimate of the change in financial estimates from the policies in the fourth year, or alternatively if a Treasury update produced at the start of caretaker period provided base numbers for the fourth year. However, this latter solution may create an additional workload for Treasury, where the additional benefit may be small.

Further consultation with agencies is required on this issue. The benefits of moving to 4 year costing may be small, in which case it may be desirable to maintain existing arrangements.

Updating parties on total spending on costings to date

A small change to PBO processes likely to be welcomed by both parties would be for the PBO to provide a running total during February and March of the cumulative impact of costed policies for

each respective leader. This would be relatively easy to prepare if the necessary spreadsheet programs were developed in advance. This is something for the next PBO to consider.

Recommendation for future PBO

The PBO recommends that future PBOs provide a running total of the cumulative impact of all costed policies for each respective parliamentary leader during February and March prior to an election.

Administration of costing requests and managing version control

An efficient and effective administrative process and records system within the PBO is crucial to managing version control and the delivery and publishing of accurate costings, costing requests and budget impact statements.

In the administrative planning stages consideration was given to solely using the Parliament's secure document management system, TRIM, for logging, tracking and costing workflow. This was not adopted for several reasons. Whilst TRIM had the capacity to capture records and with version control, its use was dependent on all staff being trained in and conversant with TRIM. Many of the seconded analysts were not TRIM-trained and limited opportunity existed for training within the peak final weeks prior to preparation of the Budget Impact Statements. Additionally, due to the staged staffing approach adopted, staff commenced at different periods, affording limited time for orientation and training in administrative processes.

Based on the 2015 PBO experience, the registering, tracking and management of costing requests, costings and associated records is by nature detailed, iterative and complex. The 2015 model of saving records and developing costings within a common shared drive prior to finalising records in TRIM (in many cases, after the election) proved successful.

Consideration should however be given to adopting an electronic records management system such as TRIM as the primary records system in 2018/2019, provided all staff are fully conversant with electronic records management systems and sufficient lead time exists for training.

Restart NSW and Reservations

The Government established Restart NSW in 2011 to fund the delivery of major infrastructure projects.¹³ The Restart NSW fund has been capitalised principally from the proceeds of divestment transactions such as the long term lease of Port Botany. It is expected to have balance of \$8.8 billion at 30 June 2015.¹⁴

The projected cash outflows from Restart comprise two categories:

- (1) **commitments**, where a project has received final business case approval and is included in the budget estimates,
- (2) **reservations**, where a project is still subject to further development, completion of project assurance processes, and final business case approval. Reservations are not included in the

¹³ See *Restart NSW Fund Act 2011*.

¹⁴ See 2014-15 Half Yearly Review at page 22.

budget estimates. They become commitments when the final business case is approved by government.

The cash balance in Restart NSW is offset against liabilities in calculating the State's net debt position.

Under this framework, there is the potential for a party to announce an election policy categorised as a "reservation" to be funded from Restart. The public may think such a policy is a firm commitment to be funded from budget, when in fact it does not yet affect budget aggregates because it is subject to final business case approval. If the policy went ahead, net debt would increase. No costing is prepared for such a policy, and the potential impact on net financial liabilities is not disclosed, because technically the forward estimates are not affected.

Where a policy is categorised as a "reservation" it is important, in terms of ensuring proper public understanding, that it is clearly disclosed the policy is still subject to business case approval and a final government decision, and, as such, its costs are not yet included in the current budget forward estimates. They will however have a cost when the business case is approved.

It would be in the interests of transparency for parties to clearly disclose this information in all election policy documents and media statements where a project is categorised as a "reservation". This is up to the parties concerned.

An option for ensuring greater transparency around "reservation" policies would be for the PBO to list these in the budget impact statement, with an additional total impact calculated for the full effect on fiscal aggregates if they did proceed. This could however be resisted by the leaders requesting costings at the time, on the grounds that the PBO's legislative mandate extends only to policies that affect the forward estimates. Any change to publish reservation details – if this concept is still used in future years - would need to be agreed with both leaders in advance.

Recommendation for future PBO

The PBO recommends that future PBOs list, in budget impact statements, all policies that are categorised as 'reservations', with an additional total impact calculated for the full effect on fiscal aggregates if the policies were implemented.

Public announcement

Early in the life of the Budget Office a NSW agency asked if the PBO should only cost policies that had been announced publicly by a leader. The agency observed that the wording in the PBO Act was ambiguous and it could be read this way.

The PBO sought advice from the Crown Solicitor (refer to [Appendix E](#)). This indicated that the Act should be read to include any proposed policy, not only those that had been announced.

Reporting

Publication of costings

The PBO did not publish any individual costings until public release of the budget impact statement on 23 March 2015. The Act only provides for the PBO to release costings when the relevant parliamentary leader notifies the PBO that the policy has been publicly announced. In practice, neither leader notified the PBO of the public announcement of any policies until the budget impact statement was released.

The PBO became aware of a number of policies mentioned in media statements by parliamentary leaders or other members of the Government and Opposition, where the PBO's costings were referenced. However, the PBO was not permitted to release any costings until it had received formal notification from the relevant leader.

Stakeholders raised concerns about this situation, in which a politician could selectively refer to a costing by the PBO without releasing the entire document, noting that it could be difficult to understand the headline numbers in a costing without reading the assumptions that it was based on.

There were also comments received from media stakeholders about the lateness of the costings being released at the same time as the Budget Impact Statements. This meant that much of what the media considered valuable information contained in the costings was not able to be absorbed or reported due to time constraints. This is an issue for the overall public understanding of the drivers of costs of policies advanced in the election campaign.

There are a several options for addressing this issue, as outlined in the table below. The PBO notes that when considering these options there is a need to consider the balance between providing transparency and allowing political parties to determine their own election strategies in relation to the announcement of election policies and their costings.

Option	Advantages	Disadvantages
1. Status quo – PBO publishes costings after being notified by leaders that the relevant policy has been announced.	Encourages participation in the costing process. Allows leaders to determine when costings will be released, according to their election strategy.	Less transparent. Permits leaders to delay notifying PBO until the budget impact statement is released.
2. Leaders are required to notify the PBO as soon as a policy has been publicly announced. PBO publishes costings after being notified.	More transparent. Costings are more likely to be available soon after policy announcements.	May encourage parties to delay making announcements or submitting costing requests until later in pre-election period

There are variants to these options. One possibility that might address the perceived problem of policies announced without the costing being published would be for the PBO, on being made aware that a costed policy has been announced, to advise the leader or nominee(s) concerned. The PBO would publish the costing within five working days of providing that advice or earlier if notified by

the leader. This would require amendment to the PBO Act – at present the PBO is only permitted to release a policy after advice from the leader concerned that it has been made public.

Budget impact statements

Timeframes relating to budget impact statements

Draft budget impact statements were provided to each parliamentary leader 15 days before the election. However, neither leader submitted a final list of policies within 48 hours after that, as required by the PBO Act. Instead both parties made late changes to their list of policies for inclusion in the budget impact statement, including changes made on the day before the budget impact statement was released.

The PBO considers that requiring leaders to provide a final list of policies 2 weeks before the election is unrealistic in the context of a modern election, where political parties continue to make announcements and refine policies until late in the pre-election period.

On the other hand, accepting late changes to policies increases the risk of errors in the budget impact statement, as making late changes increases time pressure and reduces the time available to perform quality assurance checks.

There is a need to balance the requirement to have budget impact statements that are up-to-date upon their release, with the requirement to have accurate and quality-assured budget impact statements.

With this in mind, the PBO recommends that the Act should be amended to allow more time for parliamentary leaders to provide their final list of policies for inclusion in the budget impact statement. The PBO considers that a more appropriate deadline for the final list of policies would be the ninth last day before the election (four days before the budget impact statement is due to be released).

It is noted that even with this extended deadline there may be some late policy announcements that occur after the deadline. There is, however, already an avenue available for the PBO to release an updated budget impact statement if further costings are completed after the budget impact statement is published. In the event that a parliamentary leader seeks to add policies after the new deadline, then these additions could be incorporated in an updated budget impact statement.

Recommendation

The PBO recommends that section 23 of the PBO Act be amended to require that parliamentary leaders notify the PBO of their final list of policies for inclusion in the budget impact statement on the ninth last day before the election.

Separate sections for spending and savings measures

In the budget impact statements published this year, the PBO included detailed tables listing the impact of each policy on key fiscal aggregates. Within these tables the policies were arranged according to clusters (e.g. Education, Health, Justice, etc.).

Stakeholders suggested that providing a summary of all the savings measures proposed would be a useful addition to the budget impact statement, as this would be of particular interest to the media when budget impact statements are released.

The PBO considers there is merit in this proposal and agrees that future budget impact statements should include detailed tables with all savings measures grouped together and all spending measures grouped together. Presenting this information would not require any changes to the Act, as it is simply an update to the presentation format of budget impact statement.

It should be noted that a number of policies may have both spending and saving components. For example, a predominantly savings measure may have up-front costs, or a spending measure may create savings by reducing or replacing spending for another program. Such cases could be addressed either by classifying the costing according to whether it is predominantly a spending measure or a savings measure; or by splitting the costing request into two costings – one spending and the other saving.

To capture this information it is suggested that future PBOs update the *Election costing request form* to seek information about whether the relevant policy is a spending or saving measure.

Recommendation for future PBO

The PBO recommends that future PBOs include in budget impact statements separate tables for savings measures and spending measures.

Information requests and relationships with stakeholders

Timeframes for agencies to respond to information requests

Section 16 of the Act requires agencies to respond to an information request from the Parliamentary Budget Officer within 10 business days or such other period as agreed.

This timeframe was, in practice, generally reasonable for requests made in December, especially where complex costing issues were involved.

However, it did not work as well for information requests made in February and March of the election year, where quick access to information was critical.

From the stakeholders' perspectives:

- For an agency, costing a complex policy in 10 days can appear far too short a time period to provide accurate information and appropriate quality assurance.
- For a party that is developing, and estimating the costs of, a large number of policies over a busy election period, 10 working days can be a lifetime, far too long to obtain the required cost inputs and information to refine policies.

The PBO met with cluster heads and staff in October and November 2014 to agree, where possible, 48 hour response times to information requests. In practice, this timeframe was not met other than for the simplest of requests. Nevertheless, the 48 hour goal may have been a useful tool: most

agencies on receipt of an information request would quickly respond to the PBO with indicative processes and expected timeframes when the costing would be completed.

The average turn-around timeframe for costing requests by departments was 8 working days. Average turn-around times improved from 10 days to 6 days for requests received after 1 February, suggesting agencies did appreciate the need to supply information more quickly as the election approached. There was also considerable evidence agencies developed better internal processes, and were able to speed up their responses as they became more familiar and comfortable with the PBO. The vast majority of agency costings were completed well and within a timely manner.

Given their 2015 experiences, agencies should be better prepared to respond more quickly to PBO requests in 2019.

There were 51 costing requests where agencies took longer than 10 days to respond.¹⁵ This proved especially problematic in instances where agencies responded after a delay of 10 days or longer that they were not able to provide requested data or required further information.¹⁶ There were some such delays relatively close to the election date, a concern for parliamentary leaders and their nominees.

The NSW agencies consulted had a number of different views on how best to approach this question. They ranged from support for the status quo (that is, a ten day legislated turnaround time for information requests) to qualified support for reducing the time to five days in the period closer to the election (provided that longer timeframes could be agreed in cases where more complex and difficult information requests were made). One suggestion was that the caretaker period could be the trigger date for when a shorter timetable would apply.

A further complication is that a shutdown of all non-essential public service activity is now standard practice in NSW. This includes the Parliament, so the Parliamentary Budget Office also shut down in this period in 2014-15. The PBO remained available over this period to answer queries and do some work on costings, albeit in a very limited way given absence of staff and NSW agency contacts. The Christmas closedown period for 2014-15 was from Monday 22 December 2014 to Friday 2 January 2015 inclusive.

The PBO view is that a shorter deadline for turnaround of information requests would be desirable close to the election, but is not as important for policy development in the year prior to the election. It would also not be practical to apply a shorter deadline during the January of the election year, when many agency staff are on leave and resources are stretched.

There are various options for dealing with the identified problems with turnaround times:

¹⁵ This delay was not problematic if the final response was a well-considered, detailed and completed costing, especially for requests made in December and early January.

¹⁶ In such instances, the PBO would then have to further develop its own modelling and data sets to complete the costing, or obtain information about assumptions from then parliamentary leader concerned. Earlier receipt of the "No response" from an agency would have better facilitated the PBO more rapidly using other methods to complete the costing.

Option	Advantages	Disadvantages
1. Status quo	<p>Minimal change. Increased awareness of the issue is a part solution and may assist in future years.</p> <p>Leaves discretion on response time with agencies (an advantage for agencies, not the PBO or political parties).</p>	<p>Not likely to be sufficient to address the level of concern raised with the PBO by the leaders' offices.</p> <p>Lengthy delays make costings more difficult, increase risk of errors.</p>
2. Amend legislation to require a shorter response time, such as 5 working days.	Forces agencies to turn around material faster.	<p>Not needed for the whole of the costings period.</p> <p>Onerous for many agencies, requiring additional resources.</p>
3. Amend legislation to require a shorter response time in the election year	Focuses on rapid turnaround closer to an election	Would be difficult for agencies to meet shorter deadlines during January, when many staff are away, and cause undue friction in relationships with PBO
4. Amend legislation to require a shorter response time – say six days - in the six weeks prior to the date of the election (with exceptions to be agreed with PBO, as in current legislation)	<p>Would assist in timely completion of costings in a peak period.</p> <p>Matches the average turnaround time actually achieved in 2014-15</p> <p>Allows just over a full work week to gather information and respond to request</p>	Could be a difficult challenge for the agencies that found a ten day turnaround hard to achieve in 2014-15
5. A shorter response time of five days to apply in the caretaker period.	<p>Need not require legislation – could be given effect by inclusion in the Premier's department memorandum to agency heads on caretaker arrangements.</p> <p>Balances workload on agencies with responsiveness to costing deadlines during election period.</p>	<p>Only a convention – not as certain as legislative change.</p> <p>Caretaker period may be too close to the election, allowing too much leeway for delays during February costing period. Note NSW has a very short (3 week) caretaker period.</p>

There are of course numerous variations that could combine features from different options. On balance, the PBO favours option 4.

The current words in the Act “or such other period as is agreed between the head of the agency and the Parliamentary Budget Officer” (s.16 (2)) should be retained to allow time for more complex costings if necessary.

Recommendation

The PBO recommends that section 16 of the PBO Act be amended to require that in the six weeks prior to the election, the head of a Government agency to respond to requests for information within 6 business days or such other period as is agreed between the head of the agency and the PBO.

This change is likely to facilitate improvements in internal processes within agencies in responding to PBO requests.

The next PBO should also agree with all agencies that where an agency plans to provide a “no response” or a “more information is needed” to the information request, such a response must be provided within 48 hours of the request being made — to enable the PBO to more quickly deploy alternative means to complete the costing.¹⁷

Recommendation for future PBO

Future PBOs should seek agreement from agency heads that where an agency plans to provide a “no response” or a “more information is needed response” to the information request, such a response must be provided within 48 hours of the request being made

PBO access to agency models and systems

Stakeholders suggested the PBO should be provided with underlying access to Treasury systems and models, and potentially other agency systems, so the PBO could more autonomously undertake costing exercises without relying as heavily on agency information requests.

The model would be more closely based on the Commonwealth Budget Office which does have access to underlying Treasury cost models. If the NSW PBO was to become permanent, such access would be desirable in helping the PBO better undertake their functions.

This issue should be further explored. A possible amendment to the Act could allow the PBO to have access to agency data and records similar to the access currently provided to the Auditor-General.¹⁸

Given the current 6 month tenure of the PBO, if such access was provided it may require extra resourcing within the Budget Office from Treasury and other agencies to assist with understanding and correctly using the agency systems and models.

¹⁷ This change is desirable, independently of whether the Act is changed to require agencies to respond within 6 days of receiving the PBO information request.

¹⁸ For example, the amendment could be based on Section 36 of the *Public Finance Audit Act 1983* which allows the Auditor-General to have “full and free access to the books, records, documents and papers” of an entity for the purpose of exercising its audit functions.

If no change to the Act is made, the next PBO should also discuss with Treasury whether voluntarily agreeing access to some Treasury systems could provide benefits to both agencies over the next costing period.

Building relationships between agencies and the PBO through designated contacts and secondees

Some departments established a designated contact to co-ordinate all PBO requests which proved to be helpful with, among other matters:

- ensuring costing requests were completed in a reasonably timely manner,
- keeping the PBO informed on when requests were expected to be completed,
- quickly providing the PBO with the correct person to speak to in the department on a costing or where follow-up information was required,
- providing the PBO with other sources and avenues for information where it was difficult to fully respond to a costing request,
- generally making the department more accountable when responding to PBO requests.

The Budget Office staff on secondment from cluster agencies, in addition to the benefits of providing skills and expertise to the PBO, also proved to be valuable in:

- enhancing relationships with agencies,
- helping the PBO better understand the type of information that is, and is not, likely to be available within the agency,
- simplifying PBO information requests so they could be more easily understood and answered by the agency,
- enabling the PBO to more expeditiously know where to go and who to contact within the agency to obtain relevant information.

The next Budget Office, depending on work flow, should ideally have at least one secondee from each of the Transport, Health, Justice, and Education clusters in the year of the election.

There is scope for improvement in the relationships between the Budget Office and agencies, including:

- the Budget Office better outlining its processes with agencies and its expectations with timeframes for responding to information requests,
- Each cluster providing a designated liaison person for the Budget Office, and the Budget Office providing a designated liaison person for each cluster;
- More regular updates between agencies and the PBO on when to expect responses and how many information requests agencies might receive;
- Establishing protocols for initial phone conferences with agencies when drafting up costing requests for more complex policies. Under this approach, the agency is engaged early on to assist in drafting up the information request in a sensible manner that allows the agency to meaningfully respond — so 10 days or more is not wasted with a “no response” or an answer that is unhelpful because the correct question was not asked. Such an approach may

encourage better “buy in” from agencies when responding to requests,¹⁹ and also may better ensure the PBO asks the right questions and seeks all relevant information.

Confidentiality

Ensuring the confidentiality of costing requests and costing information was a high priority for the PBO from the establishment of the office and a number of strategies were employed to maintain confidentiality. Overall, there were no issues with confidentiality during the period of operations. As far as is known by the PBO, there were no instances of unauthorised disclosure of information by a member of PBO staff, and no papers leaked either deliberately or inadvertently by other agencies involved in the costing process. See Part 2 for further details about the operational measures adopted by the PBO to protect the confidentiality of election policy costing information. The sections below outline some of the concerns raised by stakeholders about confidentiality during and after the costing process.

Agency confidentiality

Probably the area of most concern in relation to confidentiality throughout the time in which the PBO operated was in relation to sharing details about proposed policies with other NSW agencies. This was necessary for many policies where information to complete the costing was held by an agency, and unavailable on the public record. Confidentiality of policy relevant material contained in information requests from the PBO to NSW agencies was a particular concern for the Opposition, for the understandable reason that public sector staff continue to work for government ministers.²⁰

The PBO had a standard template for information requests to heads of agencies which contained strong references to the confidentiality provisions of the Act. These were further strengthened after a question was raised with the PBO, early in the costings processes, about whether section 16(4) applied to staff as well as the agency head. The PBO sought advice on interpretation of the Act: specifically, whether the requirement placed on an agency head not to disclose information, and the associated penalty, also extends to staff of the agency.

The response from the Crown Solicitor’s Office was not what had been expected – it indicated that the confidentiality obligations on an agency head did not apply to members of staff of the relevant Government agency. A copy of that advice is attached (see [Appendix E](#)).

The advice did indicate that it was “not immediately apparent why, if the section and offence reflects a concern to ensure confidentiality in relation to such information or documents [costing information requests] the prohibition was not extended to staff members.” It suggested that the legislators might have considered internal agency mechanisms or general obligations of employees in relation to confidentiality and obedience would be sufficient.

Importantly, the advice stated “it may be that notifying a member of staff of the Government agency that the Section 16(4) information is confidential and should not be disclosed to persons who are not members of staff of the agency is sufficient to enliven this obligation of confidentiality upon the

¹⁹ Agencies sometimes said the information in the costing request was not specific enough to enable a response to be completed. The initial phone conference would be designed to minimise misunderstandings, better clarify and simplify the costing request sent to the agency.

²⁰ Subject to what are known as the “caretaker” conventions in the period immediately prior to an election. In 2015 these started from the dissolution of the Legislative Assembly on Friday, 6 March 2015. See Premier’s Memorandum, M2014-12, *2015 State Election - Caretaker Conventions*

member of staff". Following this advice the PBO amended the information request template to include an additional sentence: "If an agency does not already have in place control measures to ensure that staff maintain the confidentiality of information relating to election costings, then the PBO requests staff be given a direction that such information is not to be disclosed outside the agency." It is understood that this happened.

While the same approach to information requests could be adopted for future elections, it is not entirely certain that this will be sufficient. In order to put the matter beyond doubt it is suggested that the legislature amend the PBO Act to ensure that the confidentiality requirements of Section 16(4) apply not only to agency heads but also to agency staff.

Recommendation

The PBO recommends that section 16 (4) of the PBO Act be amended to ensure that confidentiality provisions apply to the staff of Government agencies, as well as the head of an agency.

Opposition information requests and confidentiality

As this was the first time an Opposition has used the PBO to cost its full set of election policies, the PBO agreed a process where costing information requests were first sent and agreed with the Opposition before being sent to a Government agency. The Opposition sought to ensure the information requests were crafted in a manner that would enable the PBO to obtain the necessary inputs to cost the policy, but not enable the agency to 'reverse engineer' what the actual Labor policy was from the information request. This exercise was easier with some policies than others, may have slowed down the costing process,²¹ and in some instances may have led to some confusion within agencies about what information was being sought by the PBO.

In other instances, the Opposition was highly concerned about confidentiality and stipulated the PBO was not to approach any external organisation in completing the costing.

Over time, as it became clear to all parties that the process was working correctly, and Government agencies had put in place stringent procedures to protect confidentiality, the Opposition became less concerned about the issue. The process generally worked smoothly from mid-January onwards.

In the PBO's view, to prevent unnecessary processes and delays, it may be better for the next PBO to only agree to information requests being checked off by the Opposition by exception, that is, where specifically requested by the Opposition. The submitted policies could also have clearly identified any sensitive material that is not to be included in an information request sent to an agency.

Other confidentiality concerns

The PBO did not observe any instance where information about a costing was subject to unauthorised disclosure by a NSW agency. As far as is known by the PBO all the information about the content of proposed policies was kept entirely confidential.

²¹ Labor policies where an information request was sent to an agency were completed on average in 13 working days compared to an average of 6 days for other policies.

There were however instances drawn to our attention where although a policy itself may have been kept confidential, there was a possibility that awareness that the Opposition was developing a policy led to an early release of a government policy on that subject so as to gain an advantage. It is very difficult to determine whether or not this was the case. It may have been coincidence.

There was one case where an agency, not the responsible Minister, issued its own media statement shortly after being asked for information for a costing on the subject concerned. It may have been already underway. Alternatively, it is possible that the agency wanted to be seen to be taking action on its own initiative rather than implementing an Opposition policy, so accelerated its timetable. Without inside information it is not possible to determine which. It is very hard to see how the PBO could police whether or not an agency was using knowledge merely about the existence of an Opposition policy. It is however a lesson that the PBO suggests NSW agencies should note for future elections and strive to avoid any perceptions that they have misused information requests.

The positive aspect is that cases like this were very few in number. For the vast majority there was no suggestion of any use being made of knowledge about the existence of an information request to change government timing of announcements.

A good indicator of this is a statement issued by the then Treasurer on 27 February 2015²² listing Opposition policies and costs associated with them “based on the Opposition Leader’s spending commitments to date, and analysis available from NSW Treasury and key government agencies”. It was reassuringly different from the PBO costings and from information provided to the PBO by agencies, due primarily to differences in underlying assumptions. This strongly indicated that agencies’ internal measures to protect confidentiality were working.

In summary, the process in 2014-15 provides assurance that policy information will be treated with appropriately high confidentiality not only by the PBO but also by NSW agencies. The PBO did not observe any instance where information about a costing was subject to unauthorised disclosure by a NSW agency. As far as is known by the PBO all the information about the content of proposed policies was kept entirely confidential.

Policy Implementation Plans

An important element of the NSW public sector governance arrangements is the preparation of Policy Implementation Plans (PIP). In the caretaker period the Department of Premier and Cabinet (DPC) was responsible for coordinating the preparation of PIPs, which have obvious implications for the quality of advice provided to an incoming government. This process would have been helped considerably if DPC had been able to view the information requests to agencies and agency responses in relation to costings. DPC’s lack of visibility of requests and responses impeded their ability to reconcile election commitments with PBO costings. It was often unclear from the published costings and policies which commitment related to which costing. If DPC had been copied into PBO requests and agency responses it would have made its coordination role more effective and enhanced the accuracy of the financial implications section of the PIPs.

At present, the confidentiality requirements of the Act do not allow sharing of information between the PBO and DPC. There are competing policy concerns in relation to this that need to be considered. The separation of powers doctrine suggests that an arms-length relationship between an agency such as the PBO, accountable to the legislature, and the executive branch of government

²² Andrew Constance MP, *SAME OLD LABOR, SAME FUNDING FAILURES* at nsw.liberal.org.au

is desirable. This is reflected in, among other things, the PBO Act's confidentiality requirements. On the other hand, preparation of high quality advice to an incoming government²³ is an important convention of the Westminster system as it applies in NSW, and information that would make this more effective is in the interests of both Government and Opposition.

The PBO seeks guidance on this question from the PAC. If both the Government and Opposition are of the view that sharing of information between the PBO and DPC would be desirable – with appropriate provisions to maintain confidentiality and only after the start of the caretaker period – the change could be given effect either through the PBO Operational Plan or through legislation. Without bipartisan agreement, it would need to be the subject of amendment to the PBO Act.

Engagement with the media and public

The PBO had little direct engagement with members of the public, other than through the PBO website and Twitter feed. The PBO relied on the media to report on the costings and the budget impact statements.

Contact with the media was organised primarily via posting of material to the PBO website, with media releases providing an alert on key dates. Media releases were sent to the NSW parliamentary press gallery by email, and also posted to the website. The PBO also took calls from journalists and other media representatives. The majority of calls were about process matters such as when costings would be released, whether a costing would be prepared for 'xxx policy' (e.g. for a regional hospital, where the telephone inquiry came from the local regional paper), whether both parties were planning to have their policies costed and so on.

The aim of the PBO was to make the policy costings self-explanatory and include all necessary supporting materials, in order to make reporting them straightforward. This objective was realised; based on our observations of reporting (through references provided via the Parliamentary Library) the PBO considers that the costings were reported accurately.

Both leaders made numerous references to the PBO before the costings were released, suggesting in public statements that their policies either had been or would be costed by the independent PBO. The PBO received no requests from journalists to confirm these statements; the media appeared to accept them without question.

Misrepresentation

Under Section 22(3) of the Act, "if the Parliamentary Budget Officer considers that an election policy costing provided by the Officer has been publicly misrepresented, the Officer may issue a public statement to correct the misrepresentation". There were some occasions during the later stages of the election campaign in 2015 when leaders' nominees made complaints to the PBO about how material was being represented publicly and asked for a statement to be made to correct the perceived misrepresentation. None of these were obvious misrepresentation; all contained elements of ambiguity.

In one instance a comment was made by the then Treasurer that "dividends from the electricity businesses, according to the Parliamentary Budget Office, is going to be \$400 million in financial year

²³ This could be either the return of the incumbent Government or the election to government of the Opposition. An important aspect of the caretaker conventions is that the public service prepares thoroughly for either potential outcome.

2017/18". The PBO briefing paper to which this statement referred contained estimates from the Half-Yearly Review (that is, NSW government, not PBO, estimates). In response to reporting in one media outlet (The Guardian), the PBO asked for and had published, a clarification that the PBO had not forecast dividends from the electricity businesses.

A complaint was made about Coalition promises that were proposed to be funded from existing budget allocations (an issue discussed previously in this report). This was not an instance of misrepresentation, but one where the Opposition took the view that it would have been fairer if the PBO had been given these policies to confirm whether or not they could be funded internally.

In relation to complaints about whether a party had actually submitted all of the policies it ought to have, or of leaving its policies too late to be costed and similar comments, the PBO took the view that it was not the role of the PBO to police. The Act imposes an obligation on the leaders to have costed all policies proposed to be implemented if the party is elected to Government and that are likely to impact on forward estimates (see Section 18(1A)). The PBO is not in a position to determine which if any policies have been included or omitted from the list – that is up to the leaders.

On complaints about misrepresentation, the PBO took the view that unless there was blatant or egregious misrepresentation of a costing the best strategy for the PBO was to refrain from comment and to allow the costings speak for themselves. In terms of media management of incorrect statements, experience has been that drawing attention to them can spread them wider than they would otherwise have been distributed, compounding the error.

The incidents were few in number. Nevertheless, in a different election climate in future there could be potential for greater misrepresentation and misuse of PBO materials. The PBO has discretion, but no obligation, to correct misrepresentations. The Budget Office is not resourced for media monitoring and relied on the parliamentary library. Problems could arise in the event that use made of PBO costings aggrieves one of the leaders but the PBO is unaware of the reporting of that use.

It would be helpful for future PBOs to provide guidelines to the parliamentary leaders and/or in the operational plan about the circumstances under which the PBO will make public comments about costings that have been publicly misrepresented. By setting these expectations up front a future PBO will have greater freedom to make comments if circumstances dictate.

One option would be for the PBO only to make statements to correct misrepresentations following a formal complaint from the leader or nominee. This would make it clear that the PBO does not have an obligation to monitor media statements continuously during the campaign. If this option were favoured, it would also be desirable to specify how and when the PBO would advise the leaders concerned before making any clarifying statement. It would, for example, seem unwise for a PBO to make a statement following a complaint without first consulting the leader of the party allegedly responsible for the misrepresentation. In the interests of transparency it would also be desirable for any complaint itself to be made public (in the same way requests for costings are made public along with the costing itself).

Recommendation for future PBO

The PBO recommends that future PBOs provide guidelines to parliamentary leaders about the circumstances under which the PBO will make public comments about costings that have been publicly misrepresented.

Other proposed changes to the Act, operational arrangements and lessons learned

This section of the report covers a range of broader questions about the role and operations of the PBO that were raised during consultations. Any changes that might arise as a result of Public Accounts Committee consideration of the issues would be likely to require amendments to the *Parliamentary Budget Officer Act 2010*.

Agency concerns that some information requests were “fishing expeditions”

A concern raised by a number of agencies during the costing process was that some information requests appeared to them not to relate to genuine, proposed policies but to be more of an information gathering exercise or a “fishing expedition”.

Agencies said they were concerned about how the requested information would be used, if they released it to the PBO.²⁴

Section 16 (3) of the Act provides a Government agency is not required to provide information in response to requests if there is an overriding public interest against disclosure for the purposes of the *Government Information (Public Access) Act 2009* or if access to the information would otherwise be denied under that Act. This exception covers cabinet-in-confidence material and other matters that would not be disclosed under freedom of information laws.

In the PBO’s view Section 16(3) provides sufficient protection for agencies against disclosing sensitive material and there is no need for further changes to the Act. Seeking accurate costing inputs through the PBO process to help refine election policies is a legitimate and valuable tool for Oppositions. It also enhances the democratic process through the development of better policies where costs are more accurately known.

There is a need for the PBO to better explain requirements under the Act to agencies: Where the PBO is advised by a party of its proposed policy, under the Act the PBO is legally required to cost the policy, which means agencies are also legally required to help when asked.

Concerns the Act could be used to cost another party’s policies

There was also a concern that some submitted policies and information requests may have been in breach of Section 18 (3) of the Act, which requires a leader to only make costing requests in relation to policies that are publicly announced or proposed. That is, the Act cannot be used to cost another party’s policies. In these instances the PBO did check back with the party who confirmed it was a proposed policy. Hence the PBO was legally required to cost the policy.

Consideration could be given to amending the Act to allow the Parliamentary Budget Officer discretion to not cost a policy if of the view it is unlikely to be a party’s proposed policy – to provide better protections against use of the PBO to indirectly cost another party’s policies.

Related to this issue is a concern that some costing information may be released selectively without the full costing information or the accompanying policy request from the party concerned. To deal

²⁴ In one instance an agency initially said it would not be responding to a request because it did not think it was an appropriate question.

with this issue, consideration could be given to amending the Act to allow the PBO to publish a costing if the Officer considers the information in the costing is already in the public domain.

Should the PBO have a role in obtaining and publishing information on government spending and revenue to inform policy choices?

As previously discussed, every information request was based on a proposed policy, and was required to cost that policy. The PBO sought and received an assurance in any doubtful cases that the policy in question was actually proposed by the leader concerned. It was not the role of the PBO to question such assurances; as noted in the Operation Plan: “the PBO will not express any view on the merits of election policies. The role of the PBO is not to develop the policy but to cost it.”

Many policy proposals submitted early on, and especially those that covered broad policy areas and were generic in nature, were not announced. There remains a view among some NSW agencies consulted post-election that such policies had been drafted so as to gather information that otherwise could only have been gained through more cumbersome processes such as a *Government Information (Public Access) Act* request or parliamentary questions.

The Agencies did however acknowledge there was very little disaggregated information on the proposed spending in the forward estimates in NSW Budget papers, and it was therefore difficult for anyone outside government to develop policy proposals. The PBO shares this concern.

The PBO notes that the NSW Treasury is currently undertaking a project to improve the quality of budget information and provide more extensive and useful information in the published budget papers. NSW budgeting practices are not at the level of other leading jurisdictions. The government has recognised the desirability, in the interests of greater transparency, of publishing more complete information. Depending on timing and implementation of any reforms, this might mean there will be better information on which to base policy in future election years.

There would be some attractions in an option of the PBO having a role in provision of information to help parties develop sound policies to submit for costing. If managed properly, an information process could potentially reduce workloads for both the PBO and for the NSW agencies concerned.

One possible approach would be for the PBO to undertake consultations with the leaders’ offices soon after the appointment of a PBO to determine what information is likely to be required²⁵, and then arranging for the NSW agencies concerned to provide requested information (with the exception of information that would not normally be put in the public domain, such as cabinet in confidence or commercially sensitive data). While this might be seen as a disadvantage for the government of the day (giving its opponents a “free kick”), the PBO notes that any Opposition is already able to craft policy proposals under the PBO Act to gather information, at the cost of extra paperwork and processing.

An alternative option that would enhance NSW reputation for transparency would be for the PBO to publish summaries of information about spending and revenue programs in a format designed to aid in understanding cost/revenue implications of alternative policies. This information would be based on past experience with election costings and on agency advice. It would supplement other budget

²⁵ Realistically, likely only to be something requested by the Opposition leader

information already in the public domain.²⁶ This could be a preferable option to the provision of information only to the leader requesting it, and enhance public confidence in the openness of the process.

Standard costing information

Through our costing work, and in liaison with NSW Treasury, the PBO has developed a set of information on the costs of a range of common NSW public activities (nurses, hospitals, police, teachers, schools and so on). These provide a rough ready reckoner on costs of policies. They are not a substitute for a costing – specific details of a policy are required for this. Costs can vary considerably depending on location, geography, complexity, history of past efforts and other factors.

The standard costing information would however be helpful in providing parties with a rough idea of how much proposed policies might cost, and reduce workload for both parties and the PBO.

It would also be useful for public distribution. It would help with public understanding of the costs of public sector activities – and that budgeting for them involves hard choices about alternatives.

The PBO will consult with the government about whether and how this information might be released.

Should other parties have access to the PBO to cost policies?

Following an inquiry by the Joint Select Committee on the Parliamentary Budget Office (report of December 2011) and amendments to the PBO Act in 2013 the PBO costing function was limited to providing costings of the election promises of the Premier and the Leader of the Opposition. The amendments inter alia removed the PBO functions “of costing the election promises of other parties or members, and of providing technical analysis, advice and briefings to members on budget and economic matters”.²⁷

In 2014-15 this approach was not contested. The PBO received no comments or questions from minor parties or individual members about why it was not able to cost their policies. There was one question about this early in the process from a media representative.

There would be considerable workload (and associated cost) increases were the PBO to have a role in costing policies from other parties. Many smaller parties have a full range of policies covering much the same areas as those of the major parties. There is also a possibility that these policies would be less well developed and require more effort in clarifying assumptions than policies from the Government and Opposition.

Some of the policies of minor parties could, in the course of negotiations around the government’s legislative program, gain support and be implemented. Such policies would not be subject to the same degree of pre-election scrutiny and disclosure. It is not possible to tell whether some voters would have changed their vote had they known what such policies would cost, but it is conceivable some may have. This would be an argument for having independent costing of these policies made public.

²⁶ The difference would be that PBO information would be presented and formatted in a way that would assist in costing policy options; budget papers are not designed to do this, they are prepared for broader accountability and reporting purposes.

²⁷ Explanatory Note, Parliamentary Budget Officer Amendment Bill 2013

On balance there is not a strong case for the PBO costing the full set of policies for independent members or minor parties. The danger is that this would consume considerable resources for little if any disclosure benefits in relation to the bulk of the work involved. However, maintaining the status quo results in minor parties being able to announce policies whilst avoiding serious independent budget scrutiny.

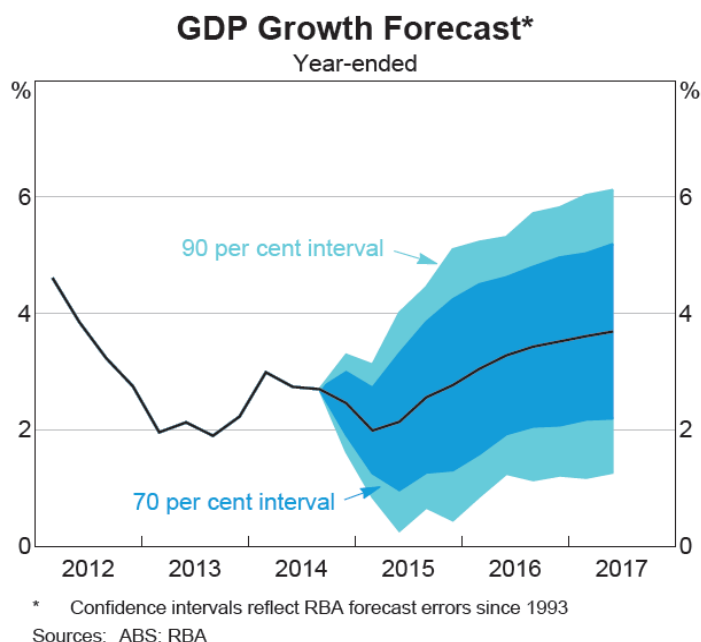
One option for reform that could be considered is for the PBO to cost a limited number of policies of recognised minor parties: for example, their five or ten highest priority policies. Having the PBO cost such policies may assist minor parties and the public to be better aware of their costs and benefits. These policies would presumably be the most likely to be put on the table in any post-election negotiations, and therefore have some prospect of being implemented.

Publication of ranges rather than point estimates

Some policies can be costed with a reasonable degree of accuracy, and a single point estimate in each relevant forward year is a reliable basis for decision making. In other cases, this represents false accuracy. For policies where there is genuine uncertainty and a range of possible outcomes a costing showing the range, and the mid-point estimate in that range, would be less misleading.

Increasingly this has been recognised in official economic publications in Australia; for example, the Reserve Bank of Australia’s key publication on Australia’s economic outlook²⁸ now shows graphs of the forward years with a 90 per cent and a 70 per cent confidence interval around the estimates, as in the following example from February 2015:

Figure 1: Example forecast with a range



Notably, this has also been recognised by the Australian Government Department of the Treasury, and there is now a new Statement 7 in Budget Paper 1 that indicates ranges for key budget estimates.

²⁸ Reserve Bank of Australia *Statement on Monetary Policy* Quarterly, at www.rba.gov.au

Publication of ranges by the PBO, potentially including graphs or charts such as the one shown above, would be useful in illustrating which policies were more volatile and uncertain. This would assist in public understanding of the drivers of budget results.

It would also be possible to show cases where there were more risks in one direction than another. The ranges for policy estimates are not always symmetrical. For example, a policy A might have an estimated cost of \$100m but a 90% probability of costing between \$95m and \$155m; an alternative \$100m policy B could have a 90% probability of costing between \$70m and \$130m. Policy A is riskier for NSW finances than policy B. The range is the same, \$60m, but the first policy could lead to higher cost blowouts and has less chance of cost reduction. At present, a costing would not show up this important difference between the two policies.

The PBO consulted both leaders' offices about whether they would prefer a single estimate or a range to be shown in the costings. While both offices understood the arguments for showing a range, they considered that the media and the NSW public were not yet ready for presentation of figures on this basis. One pointed out that NSW Budget papers were based on single estimates for activities where there was clearly a range of possible outcomes, and therefore - in line with the principle in the operating plan that the PBO would endeavour to use the same assumptions and costing methodologies as the NSW Treasury – the PBO should not show ranges for costings.

As the NSW budget papers become more comprehensive and sophisticated, the PBO hopes that there might be scope in future for the range of possible policy costs to be a better understood concept. It would be desirable to continue discussions with both parties on this in future election years.

PBO appointment

The processes for appointment of the PBO are set out in the *Parliamentary Budget Officer Act 2010* (PBO Act), Section 6, as follows:

Appointment of Parliamentary Budget Officer

- (1) The Presiding Officers are to appoint a person as Parliamentary Budget Officer for each State general election. Each appointment is to take effect on or as soon as practicable after 1 September immediately before the general election is due to be held.*
- (2) The person appointed as Parliamentary Budget Officer must be a person selected from a list of at least 2 persons recommended by a panel comprising:*
 - a. the Ombudsman, and*
 - b. the Information Commissioner, and*
 - c. the Chairperson of the Independent Pricing and Regulatory Tribunal.*

The NSW Department of Parliamentary Services began the processes for recruitment action in June 2014. The initial steps included advertising the position, engaging an executive search firm to provide assistance in locating suitable candidates, and organising dates for an interview panel comprising the independent statutory officers specified in the PBO Act. Selection interviews for the

PBO were conducted on 22 July and 29 July 2014. Following referee checks the panel then provided a report to the Presiding Officers for decision.

The PBO, Mr. Stephen Bartos, was appointed to the position effective from 22 September 2014.

In the consultations conducted by the PBO post-election to assist in preparing this report comments were received from various stakeholders that they would have preferred the PBO to have been engaged earlier. This would then have meant recruitment of other staff to the Budget Office, preparation of the Operational Plan, development of guidelines and other materials would have been correspondingly earlier.

There were two strands to the comments: some suggested that a few weeks earlier would have been helpful, others suggested more fundamental changes, requiring amendment to the Act, to bring the appointment process forward by several months to allow a much longer period for development of fully costed policies. One suggestion made was that if the PBO could not be an ongoing position, the appointment should be made for at least 12 months prior to the election. This would have obvious budget implications²⁹.

To put the appointment timetable in perspective, it should be remembered that 2014-15 was the first time the NSW PBO has been in place under the amended PBO Act and the legislated September start date³⁰. With the benefit of hindsight it appears that starting a few weeks earlier would have built in a margin to deal with unexpected delays, allow for processing of the paperwork involved, and a longer period of consideration of the selection report by the Presiding Officers. The desirability of starting earlier is a lesson to be noted and applied in 2018, based on the 2014-15 experience; it could not have been anticipated beforehand.

Should the PBO be ongoing?

The current Act makes the NSW PBO a term appointment, from September prior to the election. As noted above, there are some suggestions that this term could commence earlier. Another view expressed by some stakeholders was that the PBO should be ongoing, as is the Commonwealth PBO.

The arguments for an ongoing PBO role include that:

- it provides a higher level of support to the Parliament on policy costing and related matters
- an ongoing PBO demonstrates greater transparency in government, and a commitment to institutions of independent advice and scrutiny
- it allows for a more orderly, thorough and comprehensive development of properly costed policy proposals during the term of the Parliament
- it may be easier to recruit a suitable PBO if the position is ongoing rather than short term
- the office of the PBO can recruit and train staff to develop expertise in the function.

²⁹ Making an appointment for twice the length of time would not necessarily require twice the PBO budget, given that initial work on preparation of the operational plan and on some – not all – of the early costings was less labour intensive than the work of the PBO closer to the election. Even so, extending the timeframe from the present six months to a year would be likely to require additional funding of the order of \$1m in staffing, accommodation, IT and related costs.

³⁰ Following passage of the *Parliamentary Budget Officer Act* late in 2010, Mr. Tony Harris was appointed as PBO for the ensuing 2011 election on an acting basis in February 2011. As a result the timeframes under which the PBO then operated were much briefer than in 2014-15.

Arguments against are that:

- there is additional cost to the NSW budget
- it would be difficult for the existing parliament house to find suitable accommodation for a full time PBO and Office
- agencies would be more reluctant to second high performing staff to the Office (at present due to the limited tenure of the PBO agency heads can release staff with confidence that the seconded staff will return to their home agency)
- an ongoing PBO role will primarily assist the Opposition and provide little benefit to government members
- there is limited usefulness in costing policies four years out from an election date.

Whether or not the PBO should be ongoing is a matter for the Parliament to determine. If it were to be ongoing, the PBO considers it would only be justified on cost effectiveness grounds if it had a broader role and mandate. There is unlikely to be enough work to justify a permanent PBO if the only role is election policy costing. Possible avenues for additional value added work that could be explored should an ongoing PBO be preferred include: provision of advice to parliamentary committees on the costs of different policy options being considered in inquiries; publication and updating of information on costs and benefits of various NSW government activities to help inform the public and improve debate on the choices available to governments; provision of independent advice to NSW parliamentarians on budget and economic questions.

Timetable for Operational Plan

Under Section 14 of the Act the PBO must prepare an operational plan that includes objectives, a broad outline of strategies and a schedule of the activities that the Officer proposes to undertake; it should be done “as soon as practicable” after appointment; the PBO is then required to provide a draft to the Presiding Officers; and the PBO is to make changes to the draft plan if requested.

The Presiding Officers are then required to table the plan in each House of Parliament. An operational plan that is approved by the Presiding Officers during a period when a House of Parliament is not sitting is taken to have been tabled if it has been provided to the Public Accounts Committee (Section 19(2)).

This timetable is critical to the costings process, because under Section 19 of the Act a parliamentary leader can only make election policy costing requests after the operational plan has been tabled.

The 2014 Operational Plan was tabled on 11 November 2014 and the first request for costing was received on 3 December 2014.

Work on the operational plan started immediately following the appointment of the PBO in 2014 and it was completed as quickly as possible consistent with the need to consult a large number of people likely to be affected by the plan. This included consultations not only with the Premier and Leader of the Opposition and the Presiding Officers but also with NSW Treasury and other important providers of information to the PBO.

It is conceivable that the drafting and approval of the PBO operational plan could occur marginally faster in future years, given that there is now a complete template from which to work³¹. It is unlikely ever to be much quicker. Following his or her appointment a future PBO will always have a number of things to do before finalising the operational plan including: orientation to the Parliament; finding staff for the Office; arranging administrative support; consulting with key stakeholders; taking account of advances in PBO practices in other jurisdictions; and examining academic studies or commentary about PBOs and costings that might need to be considered for NSW operations.

One option to accelerate the timetable might be an amendment to include a firm time limit for tabling of the operational plan in the Act. A suggestion made to the PBO was that setting a deadline - for example, the last working day in October - for tabling of the operational plan would provide the political parties with certainty about when they could submit policies for costing³². This would be a practical option in the event that a PBO is appointed early in September, but does not allow leeway for the possibility that an appointment occurs late. The option could also be considered a constraint on the ability of the Presiding Officers to ensure the operational plan is thorough and complete. Both Presiding Officers examined the operational plan diligently in 2014-15.

Another option would be to mandate that the PBO must provide the draft operational plan to the Presiding Officers within one month of appointment. This would provide a greater degree of certainty about the processes within the control of the PBO, while still leaving the final decision on when the plan is tabled in the hands of the Presiding Officers.

Recommendation

The PBO recommends that the PBO Act be amended to require the PBO to provide a draft operational plan to the Presiding Officers with one month of appointment.

Resource management

Staffing

The PBO assembled a highly professional specialist team to support its operational and legislative requirements. The high quality of Budget Office staff was a key reason for the success of the 2014-15 processes.

Mix of staff

The team was comprised of staff with a range of skills and competencies including policy and budget analysts, economists, audit, accounting and administration staff which proved highly complementary and successful (sourced from parliamentary staff, NSW Treasury, the Audit Office and other

³¹ Due to the late appointment of the then PBO in 2011, as previously noted, the operational plan for the 2011 election was of necessity a brief document produced quickly to cover basic requirements. It provided some guidance to the 2014-15 operational plan, but was not comprehensive.

³² If (as was the case in 2014) the last week of October is not a sitting week in future pre-election years there is an alternative to tabling, namely provision of the plan to the Public Accounts Committee.

government departments, as well as external recruitment). Finding staff with this mix of complementary skills should remain a priority in future years.

A further skill set needed for the preparation of the Budget Impact Statements was high level spreadsheet/Excel skills to compile the numerous tables and ensure accuracy. The PBO was fortunate to be able to find a very skilled staff member from the office of the Auditor-General to assist; in future years we suggest this be planned for earlier.

Despite being successful in finding high quality staff, recruitment of suitable staff was an ongoing challenge for the whole period of PBO operations. For the costing work the PBO requires staff with an understanding of NSW budgeting practices, excellent policy skills, strong numeracy, accuracy and attention to detail, ability to turn around material quickly and excellent liaison/communication abilities. People who combine all of these skills are hard to find and highly valued. The PBO was able to find such staff, but the process of recruitment was difficult and time consuming.

Public advertising for staff was largely unsuccessful and vetting external applications was time consuming for the small PBO team. The PBO was able to find only one staff member from outside the NSW public sector. The Budget Office received a large number of applications that were not suitable; frequently applicants demonstrated little or no understanding of the role of PBO, and many confused it with the financial accounting role undertaken for the Parliament within DPS.

In addition, employment in the Budget Office is short-term, so less attractive to skilled applicants than an ongoing position. Some prospective staff withdrew their applications when advised that the position would not lead to further employment with the Parliament.

Secondments

The obvious source of suitable staff for a short period of time is secondments from within the NSW public service. The PBO advertised for expressions of interest in secondment to the Budget Office on two occasions. The PBO adopted a range of recruitment strategies including targeted departmental secondments (i.e. contacting CEOs or key staff and asking them to nominate people for secondment) and advertising through Seek and Jobs NSW.

Targeted secondments from other agencies such as NSW Treasury and the Audit Office proved very useful in securing staff with essential competencies and subject matter experts, often at short notice.

There were however some barriers to secondments. While agency heads were very strongly supportive of allowing staff to be seconded to the Budget Office, in some cases supervisors and managers were less keen.

The experience of working in the Budget Office was seen by all of the seconded staff as highly valuable, an intense learning experience and an exposure to a far wider range of policy, economic and fiscal issues than they would have found in their own workplaces.

Informal feedback from staff supervisors since their return to their home departments has confirmed that supervisors have observed a marked step up in the performance of these staff (noting these were already high performing staff).

The benefits to agencies from secondment of staff to the Budget Office are worth recording in this report. CEOs/Secretaries should be encouraged in future years to support secondments and help encourage immediate supervisors of suitable secondees to release them.

Secondments from Treasury

The late September start date for the PBO, meaning staff recruitment began in October, revealed another barrier to staffing that had not been experienced in the 2011 election: seconding staff from the NSW Treasury was more difficult because the October/November period coincided with the preparation of the Half-Yearly Budget Update. This meant many potential Treasury secondees were already fully committed. Once the Half-Yearly Update was complete, it became easier to find Treasury staff interested in being seconded to help the PBO.

As with other agencies, feedback from Treasury has been that the experience of a secondment to the PBO Office was highly valuable for the staff concerned. An approach to consider for future years would be to formalise an arrangement where high potential NSW Treasury staff were rotated into the PBO Office prior to the election as part of their development plans.

Timing of advertisements

One possible option for speeding up staff appointments would be for the HR area in the Department of Parliamentary Services to advertise for Budget Office staff as soon as a start date for the PBO appointee is known, with a closing date soon after he or she starts. While this would have the disadvantage of the incoming PBO not setting the selection criteria or job description for the roles, it would mean that the Office could start work sooner than was the case in 2014-15.

Alternatively, it could be possible for HR to prepare the documentation and seek approval from the incoming PBO once selected, before he or she takes office, to build in more lead time.

Consultants

The PBO also attempted to recruit suitable staff to assist in its processes from three leading accounting firms with strong public sector economics practices or track records in assisting NSW agencies with costings. Two of the three declined to provide assistance, giving as their reason the risk of working on election costings. This reflects a misunderstanding of PBO independence. Helping a PBO with independent, non-partisan policy costing carries none of the reputational risks that have been associated in the past with accounting firms providing costings directly for political parties.

The PBO is grateful to the one firm that did provide a very skilled and capable analyst to assist it in a period of high pressure.

For future elections it would be helpful to establish relationships with accounting firms earlier, to determine whether or not they would be prepared to assist. It may also be useful to distribute this report to the major accounting firms with a suggestion that they consider how working on costings for a PBO differs from doing this kind of work for a political party.

Matching work and staff

The previous, present and any future PBO in NSW will face uncertainty about the nature and timing of policies submitted by the leaders for costing. This is an inevitable consequence of the highly political nature of policies in the election context.

The PBO anticipated that the bulk of policies for 2014-15 would be submitted in February/March, close to the election. In fact more policies were received in January than in February. The workload also proved difficult to predict due to variances in the complexity of policies submitted. There is however no guarantee that a similar pattern will apply in 2018-19.

The subject matter of policies submitted to a PBO is also diverse and difficult to predict precisely. Past and recent experience suggests that health, transport, education and justice will almost always be areas where policies are likely to be proposed. Outside of those, in 2014-15 there was a higher number of policies affecting planning and environment than the PBO and relevant NSW agencies had anticipated and fewer than expected in the Family and Community Services cluster.

The PBO engaged policy experts in health, education and transport, and established close communications with the Justice cluster to help cost policies there; a lesson for future years however is that it would have been desirable to second staff from these clusters - or from the parts of Treasury that dealt with them - earlier than that of the 2014-2015 process.

Administrative staff

Given the volume of costing requests and associated logging, tracking and records management required, a small administration team was assembled between February and April to meet peak demand, led by the office manager.

The 2014-15 experience suggests that the amount of administrative support that would be required for accepting, logging, tracking, recording and monitoring policies submitted for costing was underestimated. For future years it is suggested that the PBO should plan for at least two administrative staff, supplemented, if necessary, by additional seconded staff at peak times.

Considerations for future PBO recruitment:

- Commence office establishment and operational capacity as soon as possible following appointment of the PBO
- Commence planning for recruitment of staff as soon as practicable
- Assemble the specialist team with the expectation of incoming costing requests from December of the pre-election year steadily then rapidly increasing to peak demand in January, February and March of the election year
- Plan for preparation of the budget impact statements including securing staff with key competencies and experience in this area
- Anticipate high volume of costing requests and associated records management. If needed, engage an additional administration staff member to assist the office manager from January to post-election period to ensure accurate, enduring electronic records are retained

Accommodation

The Budget Office operated from offices within the Parliamentary precinct, initially with a small footprint and expanding to several other office spaces in the months prior to the election to accommodate a full team of 16 staff members. While the allocation of the relatively small office space for the Budget Office was unavoidable due to the limited available spaces within the parliamentary precinct, disadvantages included some loss of communication between staff, with

resultant missed opportunities for shared learning, and a minor increase in security risk from having staff located in three different office spaces.

Managing the expanding and contracting accommodation spaces available did however deliver some benefits in minimising Budget Office rental and service overheads. Innovative fit-out of room 823 increased its capacity (space originally proposed for four staff ended up housing eight at its peak), improving security, confidentiality and workflow. Based on the recent experience, real benefits are derived from an allocated office space with sufficient capacity to accommodate the entire Budget Office staff. This is proposed as the preferred accommodation model going forward.

Part 2 - Report on the operations of the PBO

Establishment of the Office

The procedure for appointing the Parliamentary Budget Officer (PBO) is set out in section 6 of the *Parliamentary Budget Officer Act 2010* (the Act).

In accordance with the Act, Stephen Bartos was appointed Parliamentary Budget Officer by the Presiding Officers for the period from 22 September 2014 to 26 June 2015.

Upon commencing appointment, the first priorities of the PBO were:

- a) to establish the Parliamentary Budget Office (the office), comprising the staff that would assist in carrying out the functions of the PBO; and
- b) to prepare an operational plan outlining the proposed objectives, strategies and activities of the PBO.

Further details about the staff of the PBO are outlined in the Resource Management section of this chapter, while details about the operational plan can be found in the Reporting section below.

Reporting

Operational plan

After establishing the office, the PBO prepared a draft operational plan for the Presiding Officers, as required under section 14 of the Act. This was drafted by the PBO and staff in his office. Mr. John Miller made a very significant contribution to the drafting and ensuring a high quality product. In preparing the draft we consulted widely with numerous stakeholders including a number of senior staff in NSW public service agencies, the parliamentary departments, the Premier and the Leader of the Opposition.

The draft operational plan was provided to the Presiding Officers on 22 October 2014, subsequently approved by the Presiding Officers and tabled in both Houses of Parliament on 11 November 2014.

The operational plan set out the objectives of the PBO and a broad outline of the strategies and activities that the PBO proposed to undertake to achieve those objectives.

The tabling of the operational plan is an important date in the PBO's period of operations, as it is also the date from which the PBO can begin accepting costing requests from parliamentary leaders.³³

Reports to the Presiding Officers

As foreshadowed in the operational plan, the PBO prepared regular operational reports to the Presiding Officers. Over the period from October 2014 until April 2015, eight reports were provided to the Presiding Officers. These were not provided to the Premier or Leader of the Opposition. They covered administrative matters only.

³³ Section 19 of the Act provides that 'election costing requests are to be made by a parliamentary leader after the operational plan prepared by the Parliamentary Budget Officer under section 14 has been approved by the Presiding Officers and tabled in each House of Parliament.'

These operational reports did not include any information about the costing requests received by the PBO or activities related to the costing function of the PBO. The reports instead focused only on operational matters, such as resourcing and staffing, and were regularly used to seek the Presiding Officers' approval to appoint new staff.

Costings and the budget impact statement

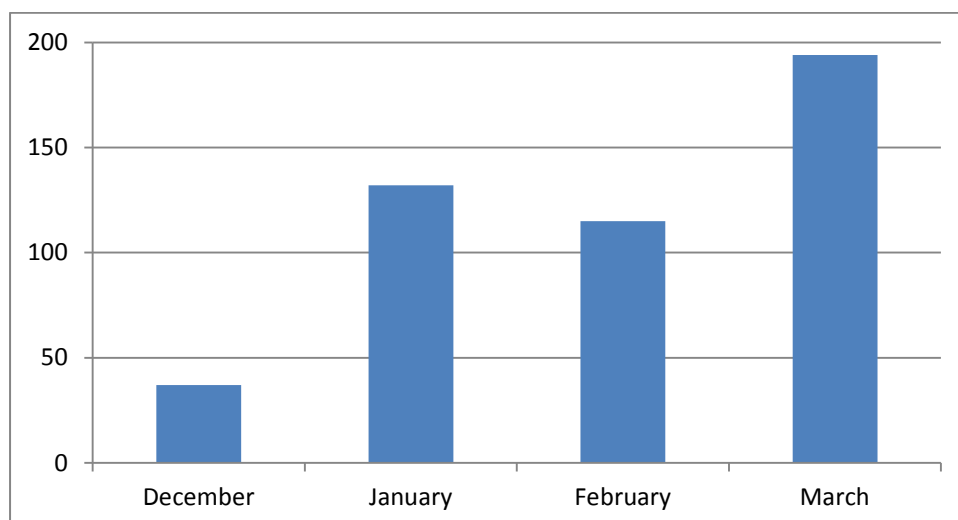
The PBO was able to accept costing requests from 11 November 2014, once the operational plan was tabled. The first costing requests were received on 3 December 2014.

In total, the PBO received 476 costing requests from the two major parties prior to the election and published 179 costings. The costing requests which remained unpublished were either withdrawn before completion (49) or were not proceeded with (248). The latter category consists of costings that were completed and sent to the relevant parliamentary leader but for which the PBO did not receive notification that the relevant policies had been announced. In the majority of these cases the reason such policies were not released was that they were variants around the same theme: either a set of options for the one policy initiative, overlapping policies that would have been unaffordable if all were implemented, or several small policies that were consolidated into one overarching policy that was released instead.

The graph below shows when costing requests were received, over the period from December 2014 to March 2015. As was expected, fewer requests were received during the first month of operations and the greatest number of requests was received during March.

However, the graph also shows that the second most requests were received in January. This differed somewhat from expectations when the operational plan was drafted, as the busiest period was then expected to be during February and March. This election was the first time the PBO had been used by both the Government and Opposition, thus it was difficult to predict the workload. The graph below shows why the PBO needed to be dynamic and responsive to workload demands over its period of operations.

Figure 2: When costing requests were received



More detailed statistics about the costing requests received and costings completed and published can be found in [Appendix A](#).

Administration of costing requests and managing version control

As noted above, the PBO received high volumes of costing requests and associated correspondence during its period of operation. In anticipation of the requests, a number of administrative processes were developed to effectively manage version control and to mitigate the risk of omitting or duplicating requests, or inadvertently disclosing the information of one party to the other.

The registering and tracking of costing requests, while time consuming and detailed, was essential to facilitate the accurate and effective logging of all incoming costing requests and to ensure that a streamlined workflow resulted. A priority for the workflow process was to ensure the allocation of costing requests by the PBO to Budget Office analysts at the earliest opportunity.

In many cases the costing requests were iterative, with party's requesting multiple options or variations for the same policy, which presented challenges to ensuring version control.

All costing requests were lodged by the nominees of each leader via email to the Budget Office inbox, which was closely monitored by the PBO and the Office Manager. Details of costing requests were recorded into a *Log of All Costings* for each party. The *Log of All Costings* recorded the policy details and tracked the progress of costings. Apart from assisting with logging costing requests, the *Log of All Costings* assisted the ongoing monitoring of progress by the PBO, the development of the budget impact statements and provided the data for the performance statistics recorded in this post-election report.

Copies of the submitted requests, associated documents and emails of submittal were saved into a secure parliamentary network I: drive location accessible to Budget Office staff. Initially the PBO planned to use an entirely soft copy workflow method. However, this proved problematic as the workload increased, with increased difficulty experienced in tracking the costings' progress through the various stages of development, review and completion. Therefore hard copy records were adopted, with a coloured and numbered workflow sheet attached to each costing request (refer to [Appendix D](#)). This method greatly enhanced the workflow and proved highly effective with no requests omitted, duplicated or inadvertently disclosed throughout the costings process.

As time permitted, electronic records were developed in TRIM, into which costings, costing requests and associated documents were saved. Following the release of budget impact statements, administration staff ensured the published versions of costings and costing requests were saved within TRIM.

After the election, the PBO decided to retain only electronic records of the 2014-15 period of operations, utilising TRIM for the PBO's enduring records and ensuring that the retention of these records was consistent with best practice. Additionally, published costings and costing requests reside on the Parliament's website under 2015 Budget Office historical records.

Preparation and publication of budget impact statements

As required under Section 23 of the Act, the PBO prepared budget impact statements for the Premier and Leader of the Opposition.

The budget impact statements listed the relevant costed policies for each leader, summarised the financial impact of each costed policy and showed the total net financial impact of all the costed policies on the 2014-15 State budget and forward estimates from 2015-16 to 2017-18. The budget impact statements reported the impact of all costed policies on the following financial indicators:

- general government sector net operating result
- general government sector capital expenditure
- general government sector net lending/(borrowing)
- general government sector net financial liabilities
- total state sector net financial liabilities.

The Act provides that each leader is to be given a draft of the budget impact statement 15 days before the day of the election. Accordingly, on 13 March 2015, the PBO provided draft budget impact statements to the Premier and Leader of the Opposition.

Within 48 hours of being provided with the draft budget impact statement, a leader may notify the PBO of their final list of policies for inclusion in the budget impact statement. In practice, neither leader finalised their list of policies for inclusion in the budget impact statement until later in the pre-election period. In theory the PBO could have published only the policies received for costing as at 15 March (the statutory 15 days before the election for the draft statement plus two days for the leaders to advise their final list). This would have been unsatisfactory, and would have resulted in a highly misleading budget impact statement for both parties that omitted many of their most important policies. In the interests of publishing a budget impact statement with the most accurate and up-to-date list of election policies for each parliamentary leader, the PBO accepted late changes to the list of policies up until the day before the budget impact statement was published.

The PBO published budget impact statements for the Premier and the Leader of the Opposition on Monday, 23 March 2015. The budget impact statements and all the individual costings were published on the PBO website. At the time of publication, the PBO distributed a media release announcing the publication of the budget impact statements and notified its followers on Twitter that the statements had been published.

The Act allows for the release of revised budget impact statements following further costings of policies after the public release of the budget impact statement. The Leader of the Opposition submitted several policies to the PBO after 23 March for costing – these were for policies proposed to be announced after the release of the Budget Impact Statements. The PBO therefore published an update to the Budget Impact Statement for the Leader of the Opposition incorporating these policies on Friday, 27 March 2015.

At the time the budget impact statements were released, the PBO was required to publish the costing requests and costings for all policies listed in the budget impact statement. These were included in Part 2 of the budget impact statements and published on the *Election costings* section of the PBO website.

Information requests and relationships with stakeholders

Developing open and productive relationships with stakeholders was one of the priorities of the PBO outlined in the operational plan (Section 3.4). The key stakeholders that the PBO interacted with were: parliamentary leaders and their nominees; the heads of government agencies and their staff; and the Presiding Officers and staff of the other Parliamentary departments.

Liaison with parliamentary leaders

The PBO sought input from both the Premier and Leader of the Opposition prior to drafting the operational plan and the PBO's *Guidelines for preparation of election costing requests*.

Shortly after establishing the Budget Office, the PBO met with both parliamentary leaders to explain the role and functions of the PBO, as well as discussing the requirements and expectations for parliamentary leaders and their nominees.

Both the Premier and Leader of the Opposition notified the PBO of two to three nominees who would exercise the functions of the parliamentary leader under Part 4 of the Act. These nominees were the primary contacts for the PBO throughout the pre-election period and were the source of costing requests and the recipients of costings completed by the PBO.

The PBO liaised with nominees on a regular basis, keeping them informed of any issues that arose with costings, as well as seeking further information about costing requests from time to time and discussing when costing requests would likely be submitted and what progress the PBO had made on costings.

The PBO would like to acknowledge and commend the professionalism and the highly constructive way in which the nominees of both leaders conducted themselves throughout the pre-election period.

Information requests and liaison with Government agencies

In order to prepare election policy costings, the PBO regularly needed to seek information from Government agencies. Section 16 of the Act sets out the legislative guidance that underpins the relationships between the PBO and other Government agencies. Under that section of the Act, the PBO may make requests for information from the head of a Government agency in order to assist in the preparation of a costing. The head of an agency is required to respond to the PBO within 10 business days; however, the agency is not required to provide the information if access would be denied under the *Government Information (Public Access) Act 2009*.

The Parliamentary Budget Officer met with the secretaries of each cluster in the weeks prior to or immediately after the operational plan was tabled. The purpose of these meetings was to establish contacts with the clusters, to discuss the role of the PBO, the expected relationship between the PBO and Government agencies, and to negotiate a shorter timeframe for responding to information requests.

The PBO considered in the months immediately prior to the election a response time of 10 business days would not be practicable if the PBO was to be able to cost all of the relevant election policies for the Government and Opposition. Following discussions on this issue, most secretaries agreed to aim for a 48 hour turnaround time in the peak period before the election. However, it was agreed

that such deadlines would not be possible in all cases, particularly in regard to complex information requests.

In practice, the average turnaround time for responses to information requests was below the legislated standard of 10 days, with agencies taking an average of eight days to respond. This average turnaround time was significantly longer than the 48 hour timeframe that had been aimed for during the early meetings.

The time to respond to information requests did improve as the election approached. In the months prior to 1 February 2015, the average response time for information requests was 10 days, while for requests made after 1 February, the average time was six days.

Additional statistics and details about the time taken by agencies to respond to information requests can be found in [Appendix A](#).

Liaison with Parliamentary departments

The PBO developed good working relationships with the other Parliamentary departments (the Department of the Legislative Assembly, the Department of the Legislative Council and the Department of Parliamentary Services).

Throughout the entire period of operations, all three departments were consistently helpful, flexible and responsive to the needs of the PBO.

The Department of Parliamentary Services provided a number of services to the PBO, including: support from the Facilities branch in, first, setting up the office and, later, reconfiguring the office to accommodate additional staff; support from Human Services in hiring new staff; IT support from the Information Services branch (including over the weekend during the busiest period in the week prior to the election); and assistance from the Accounting Services team in managing the budget of the PBO.

The Legislative Assembly and Legislative Council provided the PBO with office space. The Legislative Assembly provided early accommodation in Room 1245 and later provided overflow accommodation in Room 813 during the busiest period of February and March. The Legislative Council provided the main PBO office in Room 823, as well as providing overflow accommodation in Room 811 between January and March.

In addition to the above assistance, all three departments also provided the PBO with seconded staff.

Confidentiality

“Maintaining the confidentiality of election policy costings prepared by the PBO, prior to their public announcement, is of vital importance to the operations of the PBO, particularly in establishing the trust of parliamentary leaders.” 2014-15 Operational Plan.

In the Operational Plan the PBO undertook to maintain confidentiality in a number of ways including:

- Reinforcing the importance of confidentiality when requesting information from other agencies

- Establishing protocols for requests of information from the heads of Government agencies, highlighting the relevant confidentiality provisions set out in the Act
- Suggesting to heads of agencies that he/she ensure limited distribution of the request and draw other staff members' attention to the need for confidentiality
- Logging and tracking confidential enquiries
- A secure office environment to protect physical documents and files
- Requiring all staff, including staff seconded from other Government agencies, to sign the PBO staff code of conduct, which includes specific reference to the confidentiality provisions of the Act

These plans were implemented successfully.

Internal security and confidentiality

The PBO implemented a number of operational systems and protocols to maintain the confidentiality of costing information, including:

- Using TRIM and Parliament's IT network when preparing costings (with access restricted to PBO staff via a secure log-in);
- Operating from a secure office space within Parliament and ensuring that the office was locked whenever unoccupied;
- Ensuring that any staff working outside of the main PBO office maintained a clean desk policy – with hard copies of costing files locked in cabinets at end of each day

An especially important aspect of maintaining confidentiality was that there was no discussion of matters related to one leader's policies or costings processes with the nominees of the other leader, even where almost identical policies were being costed or similar queries were being raised.

PBO records, including all the costing requests and other requests for advice and assistance about PBO matters, have been saved in the parliamentary document management system (TRIM) in folders only accessible to Budget Office staff. The costings and budget impact statement drafts are also in these folders. They are not available to parliamentarians, NSW public service staff or parliamentary staff outside the Budget Office. Access to these documents will be provided to the incoming PBO and staff in 2018.

Engagement with media and public

The key avenue of engagement between the PBO and the media and public was via the PBO's website: www.parliament.nsw.gov.au/prod/web/common.nsf/key/ParliamentaryBudgetOffice.

The website provided information about the role of the PBO, as well as being the repository of documents published by the PBO including: the operational plan, costing guidelines, election policy costings, budget impact statements and historical material relating to the 2011 election.

The PBO published three media releases over its period of operations, announcing the appointment of the PBO, the tabling of the operational plan, and the release of the budget impact statement. The PBO also established a Twitter account to notify followers of the release of election costings and budget impact statements.

Over the period of operations the PBO received a number of enquiries from the media, most of them shortly before or after the release of the budget impact statement. As indicated in the operational plan, the PBO acted as the media spokesperson for the Budget Office and all requests for comment were directed to Mr Bartos. However, Budget Office staff were on occasion able to provide factual information in response to media enquiries, for example, providing the time and date that the budget impact statement was due for release.

Resource management

Budget

A total budget of \$2.25 million was allocated by NSW Treasury to meet the operational and staffing requirements of the PBO. A range of measures were implemented to effectively manage the budget, consistent with strategies outlined in the PBO Operational Plan (Section 3.6 Manage resources effectively). These included:

- Developing a PBO budget with planned expenditure allocations
- Developing budgetary monitoring and monthly reporting mechanisms
- Developing protocols for expenditure authorisation, including a formal delegations process approved by the Presiding Officers
- Exercising controlled budget spending
- Maintaining a small core staff to minimise staffing overheads
- Factoring and maintaining budgetary capacity to meet expected peak staffing budget allocations in the month/s prior to State general election
- Providing for staged engagement of specialist staff to meet growing and/or peak workloads of the PBO
- Harnessing assistance of in-house expertise where appropriate from House Departments or Parliamentary Services for office establishment, staffing, recruitment and technology requirements
- Minimising travel costs by using the most economical options
- Minimising printing costs by publishing documents only on the PBO website
- Meeting with the Financial Services branch of DPS, from time to time, to discuss the PBO's budget allocation
- Advising the Presiding Officers, from time to time, about how the PBO was tracking against its budget

The PBO budget allocation was not exceeded during the PBO's period of operations. Refer to [Appendix B](#) for the budget results overview. [Note: the PBO is waiting on advice on spending totals and will include this information in the final report.]

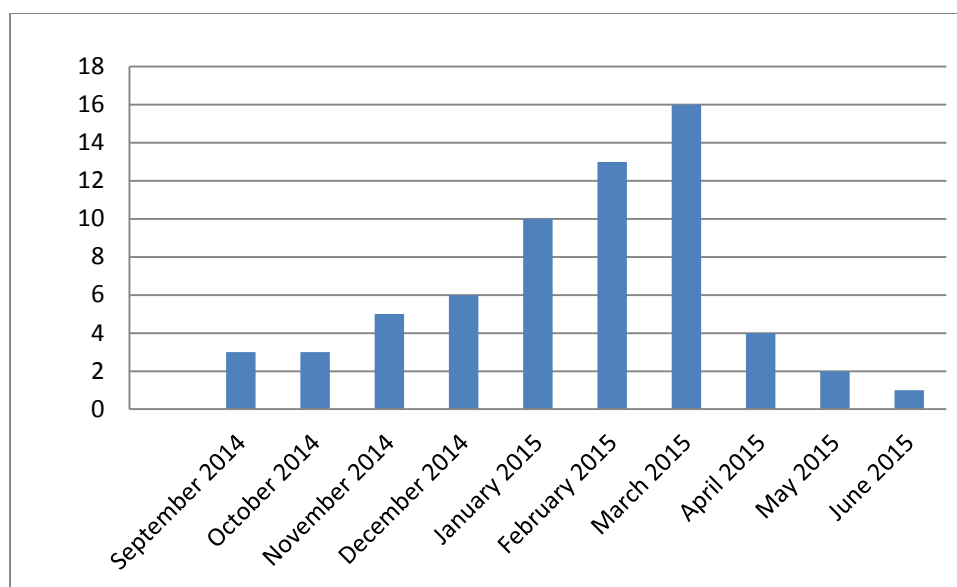
Staffing

In its establishment phase and for several months following the appointment of the Parliamentary Budget Officer, the PBO maintained a small core staff comprised of Mr Bartos and two seconded

parliamentary officers. This establishment phase included office start up and fit out, developing internal processes, planning and methods for managing resources, key stakeholder liaison and developing the PBO operational plan. This small core team continued for the duration of the PBO to ensure its consistent and effective operation.

Subject to operational needs and as part of a staged staffing approach, the PBO engaged staff with key competencies in the months prior to the State general election. Staff numbers increased steadily from the initial core staff of three to a maximum of sixteen at peak PBO operational time. Refer to the graph below which outlines the staffing numbers and trends for the period of the operation of the PBO (22 September 2014 to 26 June 2015).

Figure 3: PBO staff numbers



The highly professional and specialist PBO team was formed through secondments of parliamentary staff, secondments from other government agencies, external temporary recruitment and by engaging consultants as required. The recruitment was led by the Parliamentary Budget Officer and supported by the PBO core staff and Parliament’s Human Services Branch, Department of Parliamentary Services. This phased recruitment process allowed the PBO to meet its growing and/or peak operational outcomes whilst minimising staffing overheads.

Accommodation

As outlined in the PBO Operational Plan (Section 3.6 Manage resources effectively) the Office was established from 22 September 2014 until 26 June 2015 within the Parliamentary precinct. In its establishment phase, the PBO occupied a very small footprint initially within Room 1245, followed by Room 823, which had an initial capacity of four workspaces.

In anticipation of peak operational demand and to facilitate optimum workflow based on staff co-location, innovative modifications to the fit-out of Room 823 resulted in its increased capacity to accommodate eight staff members.

During the peak months of January, February and March 2015 additional PBO staff were accommodated within Rooms 811 (Legislative Council Committees) and 813 (Legislative Assembly

Committees). In April 2015, following the election, the majority of secondments and temporary engagements concluded and the remaining core PBO staff occupied Room 823 only.

The basic operational needs of the PBO, including accommodation, accommodation fit-out, information technology network and communication services and financial services, were provided by the Department of Parliamentary Services.

The PBO and staff wish to extend sincere thanks to the Legislative Council, Legislative Assembly and in particular to the Department of Parliamentary Services and staff for the ongoing assistance and support of the operations of the PBO.

Appendix A – Costing statistics

The following tables provide detailed statistics about the costing requests received by the PBO, as well as the costings that were completed and published by the PBO.

Table 1: Costings received and published

Number of costing requests received	476
Number of costing requests withdrawn before completion	49
Number of costings completed	427
Completed costings published by the PBO	179
Completed costings not proceeded with	248

Table 1, above, provides the total number of costing requests received from both the Coalition and ALP. It also shows the number of costing requests that were withdrawn and the number of costings that were completed by the PBO. The completed costings are further broken down between costings that were published by the PBO, and costings that were completed but never published, which are recorded in the category: ‘Completed costings not proceeded with’.

‘Completed costings not proceeded with’ refers to costings the PBO completed and provided to the relevant parliamentary leader, but for which the leader did not notify the PBO of the public announcement of the relevant policy. These costings account for just over half of all of the costing requests received.

Table 2: Completion times for costings

Average days to complete costings – all costings	8 days
Average days to complete costings – received before 1 February	13 days
Average days to complete costings – received from 1 February	6 days

Table 2 provides information on the average time taken by the PBO to complete costings and provide them to the relevant parliamentary leader. The time taken is recorded in business days, excluding public holidays and the 2 week period over Christmas/New Year during which the PBO was closed.

The table provides the average time for all costings, as well as breaking the figures down according to when the costings were received. The peak period for costings was in February and March and the table shows that turnaround times reduced during this period. As noted in Chapter 1, this reflects a number of factors including: increased PBO staff numbers, streamlined processes and procedures in both the PBO and agencies that the PBO was seeking information from, the fact that later costings were often informed by work completed for earlier costing requests, and the increased urgency to complete costings as the election approached.

While the average time taken to complete a costing was 8 days, the range was between 1 day and 48 days. This range reflects the broad variety of costings, some of which were simple to cost and others which were complex and required information from Government agencies to complete.

Costings involving information requests

Of the 476 costing requests received, 217 of those requests (45%) required information from a Government agency in order for the PBO to complete the costing. The tables below provide further detail about the time taken to complete these requests.

Table 3: Completion times for costings involving information requests

Average days to complete costings – all costings with information requests	13 days
Average days to complete costings with information requests – received before 1 February	16 days
Average days to complete costings with information requests – received from 1 February	9 days

Table 3 provides details on the average time taken to complete costings that required the PBO to seek information from a Government agency. As would be expected, the time taken to complete costings that required the PBO to write to Government agencies seeking information was higher than for other costings.

Table 4: Turnaround times for agencies responding to information requests

Average days to respond to information request – all costings	8 days
Average days to respond to information request – received before 1 February	10 days
Average days to respond to information request – received from 1 February	6 days

Table 4 reports the average time taken by Government agencies to respond to information requests sent by the PBO. Under section 16 of the Act, the head of a Government agency is required to respond to information requests within 10 business days or such other period as is agreed between the head of the agency and the Parliamentary Budget Officer. As shown in the table above, the average time to respond to information requests was lower than the 10 day requirement set out in the Act.

While most agencies responded within 10 days, there were 51 information requests that took greater than 10 days to be returned, and nine that took greater than 15 days.

The table above shows a reduction in the timeframe to respond in the period after 1 February. The PBO considers the following factors contributed to this reduction: improved understanding of PBO processes and streamlined procedures in agencies, increased urgency to complete costings as the election approached, and the fact that later information requests were sometimes informed by work completed for earlier requests.

It should be noted that the turnaround times recorded in this table refer to the time taken to receive an agency's first response to an information request. It does not take into account any follow up questions that the PBO may have had regarding the information provided. In many cases, the PBO sought clarifications or additional information from agencies after receiving responses to information requests. The time taken for such follow ups was not specifically recorded and ranged from the same day to a number of weeks.

Appendix B – Budget of the PBO

PBO Operating Statement

(As at 21 May 2015)

	Annual Budget	YTD Actuals	Funds Available
Salaries & Wages (incl on-costs)	533,306	547,597	-
Contract staff	1,081,640	142,614	939,026
Employee Related Expenses	1,614,946	690,210	924,736
Minor Works	134,118	-	134,118
Rent	46,526	26,405	20,121
Accommodation Expenses	180,644	26,405	154,239
Books, papers, periodical	1,800	-	1,800
Consulting & contractors	199,990	3,800	196,190
Printing, stationery	13,836	3,036	10,800
Postage, courier	1,800	17	1,783
Staff Recruitment	87,781	71,712	16,069
Various	2,900	655	2,245
Stores and Office Equipment	9,000	-	9,000
Administration Expenses	317,107	79,219	237,888
Travel expenses	45,021	28,322	16,699
Travel Expenses	45,021	28,322	16,699
Telecommunication Costs	22,243	2,109	20,134
Network and IT Costs	70,039	11,363	58,676
Other Operating Expenses	635,054	147,417	487,637
Expenditure	2,250,000	837,627	1,412,373

Note: PBO also incurred capital expenses \$77,034 which is not included in the above operating statement.

The information above is current at end of May, the latest reporting period prior to the transmission of this report to the PAC. There are some expenses still to be recorded, and the final budget outcome will not be known until after the end of the financial year.

The information at end May indicates that actual expenses will be lower than budgeted. This is for a number of reasons:

- Much lower than expected spending on contractors and consultants. As noted in this report, the PBO experienced difficulty in obtaining staff from the major accounting and consulting firms. This is an issue to be addressed for the future; it likely reflects a misunderstanding on

the part of such firms of the role of the PBO, and their wariness about the political risks of association with election costings based on past negative reporting in different election contexts.

- A different workflow than anticipated: a large proportion of budget had been kept unspent in anticipation of a heavy upturn in workload in March. In the event this did not occur for the 2015 election. It is not possible to plan in advance for the volume of requests for costing from the leaders during an election campaign, and ensuring sufficient funds are available to meet possible peak demand is a prudent course of action
- Lower accommodation expenses than budgeted, reflecting the objective of the PBO to collocate staff in as close proximity as possible so as to encourage them to exchange information and learning – this meant a much smaller building footprint for the staff than anticipated
- Lower travel expenses than budgeted as a result of the practice of the PBO using low cost economy fares wherever possible to travel
- Other operating expenses including attribution of parliament house facilities costs such as IT and communication expenses are still to be passed through fully in the accounts and may increase.

Appendix C – Summary of stakeholder feedback

After the election, the PBO sought feedback from stakeholders who had participated in the election costing process to find out what they thought worked, what was problematic and what could be improved for future elections. The stakeholders who responded included representatives from Government agencies that had interacted with the PBO during the costing process, as well as representatives from the two major political parties.

Feedback from Government agencies

Interpreting information requests

- Many of the information requests to departments were worded in very broad or general terms resulting in:
 - difficulty in determining the level of information required and any associated resource implications for the department
 - providing responses of a more hypothetical nature
 - doubt as to whether they represented actual policies to be costed or were merely an information-gathering exercise for the parties
- Greater specificity in information requests and clarity around what outcomes policies are seeking to achieve would greatly assist the departments in:
 - framing responses to the PBO requiring fewer clarifications and iterative changes
 - meeting the tight timeframes for responses
- It would enhance the information requests process with departments if:
 - the PBO incorporated a process of developing and refining the types of questions asked of both parties upon receiving their costing requests, to better clarify the details prior to forwarding to the departments. This should lead to few iterative changes and facilitate the provision of consistent, well-formed advice by the departments
 - PBO analysts also made telephone contact with departments for each new request to provide greater understanding of context, assumptions and caveats within the requests
 - PBO analysts established and maintained regular contact with departments on the various information requests to clarify and more effectively complete information requests within the tight timeframes

Response times for information requests

- Caretaker period represents a peak demand time for departments with the requested 48 hour turn-around time for requests by the PBO adding additional burden
- Where information requests were based on policy announcements, with additional material in the public domain, this provided clearer parameters for departments and in these cases the requested 48 hour turn-around was mostly achievable

- Other requests of a broader, less specific nature proved more challenging to complete within the requested timeframe
- Suggestion by one departmental representative of staggered time lines for completion of information requests according to complexity, with an additional factored period for the PBO to complete the costing

Inability to provide advice about proposals

- Some department representatives considered that the process allowed no opportunity to provide departmental advice or feedback on the viability of proposals

The PBO legislation

- Some departments were uncomfortable providing certain information which possibly was 'cabinet in confidence'. Uncertainty existed in determining aspects of PBO Legislation and whether GIPA might apply
- Close liaison between PBO and departmental staff may find workarounds to requests which may be classified as 'cabinet in confidence' by reducing the scope of the request, enabling a response to be provided
- Suggested consideration of a legislative change whereby if either party announces a costing then a requirement exist that the PBO publish the associated costing within 24 hours following the announcement
- Consideration should be given to PBO costings also including the source of policy funding

The forward estimates

- The department representatives discussed the difference between NSW and Commonwealth Government practices where greater budget detail is published federally providing greater transparency for the opposition and public, over the forward estimates.
- Suggested NSW should adopt the practice of publishing greater detail in the half-yearly review, but acknowledged this would require legislative changes
- In terms of ensuring consistency and appropriateness of responses from departments, discussion took place about a potential model where Treasury would coordinate the requests forwarded by the PBO. This model did not gain unanimous representative support
- Suggested making the Treasury On-line Entry System (TOEs) information available to the PBO so that it has greater information about what is in the budget
- Noted that the NSW Forward Estimates starting point is based on the half-year review
- Raised concern around costings publicly announced referencing 'the Forward Estimates' which inferred or could be interpreted by the public that the costings were based on figures for a four-year term of government when actually they were based on a 3 years and six month period

Consistent approach to information requests

- Suggested it may be useful and may serve to better inform the public if information responses from departments also outlined options based on the existing budget allocation and indicated what could not be delivered due to projected budgetary shortfalls

- Raised concerns held by departmental chief executives regarding published costings that indicated the associated policy costs would be absorbed by departments. In some cases departments had not been consulted but would have advised that the costs could not be absorbed. In other instances information requests forwarded by the PBO included the opportunity for consultation and departmental feedback. A consistent approach was sought and recommended
- Suggested that a future PBO consider providing a summary of the approved policies just prior to their being published on the Parliament's website to facilitate the briefing of the department heads prior to the information being made public

General comments

- PBO staff were very good to deal with, consistently providing clarification and advice to departments on the many information requests and iterations
- Good working relationships existed and there was general appreciation by the departments for the PBO team's ongoing assistance and advice

Appendix D - PBO costings workflow check list

TRIM REF:

COSTING REQUEST		COSTING REQUEST TITLE:	
Number:			
Batch No: #			
ASSIGNED TO ANALYST	Name:	Date:	
INFO REQUEST TO DEPARTMENT	Cluster/Agency Name:	Date:	
INFO RECEIVED FROM DEPARTMENT		Date:	
COSTING REVIEW BY DATA REVIEWER:	Name: Signature:	Date:	
SIGN OFF BY PBO:	Signature:	Date:	
SENT TO LEADER BY PBO:	Signature:	Date:	
REQUEST & COSTING RECEIVED BY OFFICE MANAGER	Signature:	Date:	
COMPLETED COSTING ADMINISTRATION: PDF/REGISTERED/ FILED BY OFFICE MANAGER	Signature	Date	

Appendix E – Advice from Crown Solicitor’s Office

This appendix includes two letters of advice received from the Crown Solicitor’s Office, in regards to the following matters:

- Advice about what is meant by ‘publicly announced or proposed policy’ in section 18(1) of the *Parliamentary Budget Officer Act 2010*;
- Advice about whether confidentiality provisions set out in section 16 of the *Parliamentary Budget Officer Act 2010* apply to staff of Government agencies



CROWN SOLICITOR
NEW SOUTH WALES

Advice

Meaning of “publicly announced or proposed policies” and Election Policy Costings

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Prepared for: PBO800 Parliamentary Budget Office
Date: 8 October 2014
Client ref: Mr Stephen Bartos, Parliamentary Budget Officer (PBO14/1)
CSO ref: 201402616 - T08 - Kenny Ng

1. Summary of advice

- 1.1 While the phrase "publicly announced or proposed policies" in s. 18(1) of the *Parliamentary Budget Officer Act 2010* ("the *Act*"), read in isolation is seemingly ambiguous, when regard is had to the context in which the phrase appears as a whole, (including ss. 21 and 22 of the *Act*) the word "or" in that phrase is to be read disjunctively. Accordingly, while the adverb "publicly" relates to the word "announced", it does not also extend to modifying the verb "proposed".
- 1.2 In my view, an election costing request by a parliamentary leader and the consequential preparation of an election policy costing by the Parliamentary Budget Officer is not limited to a "publicly announced" or "publicly proposed" policy, but extends to a "proposed policy." In this respect, a proposed policy which falls within the ambit of s. 18(1A)(a) of the *Act*, need not be publicly announced or publicly proposed before the obligation on a parliamentary leader under that provision arises.
- 1.3 Please note this is a summary of the central issues and conclusions in my advice. Other relevant or significant matters may be contained in the advice, which should be read in full.

2. Advice sought

- 2.1 By letter of instructions dated 2 October 2014, you seek my advice with regard to the interpretation of s. 18 of the *Act*. In particular, you refer me to sub-sections (1A) and (1) of s. 18 and seek my advice as to whether policies need to be publicly announced before they may be the subject of an election costing request and costed by the Parliamentary Budget Officer.
- 2.2 My advice is sought on an urgent basis and is requested no later than Friday, 10 October 2014. Accordingly, this advice represents my views in the limited time available to me and should be read in that context.

3. Meaning of "publicly announced or proposed policies"

Legislative scheme

- 3.1 Section 5 of the *Act* establishes the position of Parliamentary Budget Officer "as an independent officer of Parliament" (s. 5(1)) whose functions "are only those conferred by" the *Act* or any other Act (s. 5(2)).
- 3.2 Part 3 (ss. 12-17) of the *Act* is titled "Functions". In this regard, s. 12 provides that the Parliamentary Budget Officer "has the functions conferred by or under Part 4 in respect of the preparation of election policy costings". Part 4 (ss. 18-27) of the *Act* is titled "Election policy costings" and deals with, *inter alia*, election costing requests (Division 1 (ss. 18-20)) and election policy costings (Division 2 (ss. 21-23)).

- 3.3 By operation of s. 21 of the *Act*, the Parliamentary Budget Officer is to prepare a costing of an election policy "as soon as possible" after receiving an election costing request from a "parliamentary leader"¹.
- 3.4 Relevantly for the purpose of this advice, s. 18 provides as follows:

"Request for election policy costings by parliamentary leaders"

(1A) A parliamentary leader has the following obligations:

- (a) a parliamentary leader is to have costed under this Part all the policies of the leader's party that are proposed to be implemented if the party is elected to Government at the next State general election and that are likely to impact on the current and relevant forward budget estimates,
- (b) a parliamentary leader is to advise the Parliamentary Budget Officer in writing on the fifth last day before the State general election is due to be held that all such policies of the leader's party have been notified to the Parliamentary Budget Officer.

This subsection does not place an obligation on a parliamentary leader that is enforceable in a court or tribunal.

- (1) A parliamentary leader may, in accordance with this Part, request the Parliamentary Budget Officer to prepare costings of **publicly announced or proposed policies**.
- (2) An election costing request may only be made in relation to policies that are announced or proposed for implementation after the next State general election.
- (3) A parliamentary leader may only make an election costing request in relation to a policy publicly announced or proposed by that leader.
- (4) An election costing request may relate to proposed changes in expenditure or revenue.
- (5) An election costing request must:
 - (a) be in writing, and
 - (b) outline fully each policy to be costed, giving all relevant details for the purpose of costing the policy, and
 - (c) state the purpose or intention of the policy.
- (6) For the purposes of this section, a policy is taken to be announced or proposed by a parliamentary leader if it is announced or proposed by a member of Parliament on behalf of the leader or of the party concerned" (my emphasis).

Grammatical ambiguity – s. 18(1) of the *Act*

- 3.5 The power, authority or duty (function) conferred on a parliamentary leader under s. 18(1) of the *Act* to request, in accordance with Part 4, the Parliamentary Budget

¹ "Parliamentary leader" is defined in s. 3(1) of the *Act* as meaning either the Premier or the Leader of the Opposition.

Officer to prepare an election policy costing of "publicly announced or proposed policies" is, when read in isolation, framed with a grammatical ambiguity. In this regard, the phrase "publicly announced or proposed policies" is, as alluded to in your letter of instructions, subject to two competing interpretations.

- 3.6 First, the adverb "publicly" could be interpreted encompassing both "announced or proposed", and therefore requiring policies to be made public (i.e., a publicly announced policy or a publicly proposed policy) before an election costing request be made to the Parliamentary Budget Officer for a costing.
- 3.7 The alternative interpretation is that "publicly" only relates to the verb "announced", and that "proposed" should be read disjunctively to "publicly announced". It follows from this interpretation that an election costing request does not require an election policy to first be "publicly proposed" but merely "proposed" by, or on behalf of,² a parliamentary leader, before it (the request) be made to the Parliamentary Budget Officer.

Resolving the ambiguity

- 3.8 The starting point in considering grammatical ambiguity in legislative provisions is to read the provision, in this case s. 18(1) of the *Act*, in the context in which it appears having regard to the purpose, subject matter and scope of the context in which it is found.³ As noted in *Griffiths v The Trustees of the Parliamentary Contributory Superannuation Fund* [2012] NSWCA 231:⁴

"The function of a court, when construing a statute, is to give effect to the will of Parliament as expressed in the law. That task must begin with a consideration of the relevant text and have regard to its context. That 'context' includes not only other provisions of the same statute but also the existing state of the law, other statutes in pari materia, and any mischief which it can be discerned, by those and other legitimate means, the provision was intended to remedy."

- 3.9 With this in mind, s. 18(1A)(a) of the *Act* creates an obligation (which cannot be enforced in a Court or Tribunal) on a "parliamentary leader" to "have costed" under Part 4 of the *Act*, "**all the policies** of the leader's party **that are proposed to be implemented if the party is elected** to Government at the next State general election **and** that are **likely to impact** on the current and relevant forward budget estimates" (emphasis added). Following on from this, s. 18(1) provides that a parliamentary leader may, in accordance with Part 4, "request the Parliamentary Budget Officer to prepare costings of **publicly announced or proposed policies**" (emphasis added).

² In relation to "on behalf of" a parliamentary leader, see s. 18(6) of the *Act*.

³ *Kingston v Ke prose Pty Ltd* (1987) 11 NSWLR 404; s. 33 of the *Interpretation Act 1987*.

⁴ By Meagher JA (with whom McColl and Campbell JJA agreed) at [10] (citations omitted from quote).

3.10 In understanding the scope of the power, authority or duty conferred on a "parliamentary leader" and the Parliamentary Budget Officer, it is relevant to note the functions conferred on the Parliamentary Budget Officer in respect of preparing an election policy costing under Division 2 of Part 4 of the *Act*, in particular ss. 21 and 22 in that Division. Sections 21 and 22 relevantly provide:

"21. Parliamentary Budget Officer to prepare costings of election policies

- (1) As soon as possible after receiving an election costing request, the Parliamentary Budget Officer is to:
 - (a) prepare a costing of the policy concerned, and
 - (b) provide the costing to the parliamentary leader who made the request.

...

- (4) A parliamentary leader is required to notify the Parliamentary Budget Officer of the public announcement by that leader of policies that have been costed by the Officer.

22 Public release of election policy costings

- (1) A parliamentary leader may publicly release an election policy costing provided to that leader by the Parliamentary Budget Officer.
- (2) The Parliamentary Budget Officer is required to publicly release an election costing request and the election policy costing when the parliamentary leader who requested the costing notifies the Officer that the policy has been publicly announced.
- (3) If the Parliamentary Budget Officer considers that an election policy costing provided by the Officer has been publicly misrepresented, the Officer may issue a public statement to correct the misrepresentation."

3.11 Three aspects of ss. 21 and 22 are particularly significant for current purposes. First, s. 21 provides that the Parliamentary Budget Officer is to cost a policy "after receiving an election costing request" (my emphasis). An "election costing request" is defined in s. 3(1) of the *Act* as meaning:

"a request made under Division 1 of Part 4 to the Parliamentary Budget Officer for the preparation of an election policy costing."

3.12 Secondly, a textual analysis of s. 21(4) of the *Act* indicates that it requires a "parliamentary leader" to notify the Parliamentary Budget Officer "of the public announcement by that leader of policies that have been costed by the Officer". The choice of tense in s. 21(4) contemplates a scenario where the preparation of an election policy costing pursuant to an election costing request precedes the public announcement of the policy by the parliamentary leader.

3.13 Thirdly, s. 21(4) of the *Act* should be read in conjunction with s. 22(2) of the *Act*, which later provision relevantly provides that the Parliamentary Budget Officer "is required to publicly release an election costing request and the election policy costing when the

parliamentary leader who requested the costing notifies the Officer that the policy has been publicly announced." The public release of the costing of an election policy by the Parliamentary Budget Officer when notified of the public announcement of that policy (pursuant to s. 21(4)), is consistent with the election costing request being made by the parliamentary leader to the Parliamentary Budget Officer prior to the public announcement of the policy.

- 3.14 The above interpretation is also consistent with the word "or" in the phrase "publicly announced **or** proposed policies" being interpreted as operating disjunctively. While there are cases which have interpreted "or" conjunctively, most commonly it is interpreted as disjunctively, separating items or alternatives (*Federal Steam Navigation Co Ltd v Department of Trade* [1974] 2 All ER 97 at 112).
- 3.15 With the foregoing in mind, returning to the duty contained in s. 18(1A) of the *Act*, a "parliamentary leader" is, as earlier noted, required to request the Parliamentary Budget Officer to cost "all the policies of the leader's party that are proposed to be implemented if the party is elected to Government at the next State general election and that are likely to impact on the current and relevant forward budget estimates". That provision refers to policies that are "proposed" and does not refer to "publicly announced" at all. If it were intended that a policy be publicly announced before it was costed, I would expect that s. 18(1A) would refer to policies that are "publicly announced" rather than only use the word "proposed".

Conclusion

- 3.16 In summary, while the phrase "publicly announced or proposed policies" in s. 18(1) of the *Act*, read in isolation is seemingly ambiguous, when regard is had to the context in which the phrase appears as a whole, the word "or" in that phrase is to be read disjunctively (as it most commonly in a grammatical sense is). Accordingly, while the adverb "publicly" relates to the word "announced", it does not also extend to modifying the verb "proposed". In short, an election costing request by a parliamentary leader and the consequential preparation of an election policy costing by the Parliamentary Budget Officer is not limited to a "publicly announced" or "publicly proposed" policy, but extends to a "proposed policy." In this respect, a proposed policy which falls within the ambit of s. 18(1A)(a) of the *Act*, need not be publicly announced or publicly proposed before the obligation on a parliamentary leader under that provision arises.

Signed:


Michael Khoury
A/Special Counsel
for Crown Solicitor



CROWN SOLICITOR
NEW SOUTH WALES

Advice

Disclosure of information obtained re request by Parliamentary Budget Officer

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Prepared for: DBO800 Parliamentary Budget Officer

Date: 12 January 2014

Client ref: D14/30533; Stephen Bartos

CSO ref: 201500035 T08 Sally Johnston

1. Summary of advice

- 1.1 In my view, s. 16(4) of the *Parliamentary Budget Officer Act 2010* ("the *PBO Act*") does not apply to members of staff of the relevant Government agency. The obligation and penalty imposed therein relates only to the head of the Government agency.
- 1.2 Please note this is a summary of the central issues and conclusions in my advice. Other relevant or significant matters may be contained in the advice, which should be read in full.

2. Background

- 2.1 The Parliamentary Budget Officer is established by the *PBO Act* as an independent officer of Parliament, to provide for costings of election policies.
- 2.2 The Parliamentary Budget Officer is assisted by parliamentary staff, and those staff comprise the Parliamentary Budget Office (s. 11(1)). The Parliamentary Budget Officer may also engage consultants to assist in the exercise of his or her functions, who are thereby members of staff of the Parliamentary Budget Office (s. 11(4) and (5)).

3. Advice sought

- 3.1 You seek my urgent advice as to section 16(4) of the *PBO Act*, specifically:

"...whether the requirement placed on the head of any agency not to disclose information, and the associated penalty [under s. 16(4)], also extends to staff of the agency".
- 3.2 I confirm that, following my request dated 4 December 2014, on 6 January 2015 you confirmed that the Department of Premier and Cabinet, on behalf of the Executive, is agreeable to my providing advice on this issue.

4. Section 16(4) of the *PBO Act*

- 4.1 The Parliamentary Budget Officer has the functions set out in Part 3 (e.g. to prepare an operational plan per s.14 and to report to the Public Accounts Committee per s. 15) and Part 4 of the *PBO Act* (to determine election policy costings, see also s. 12). In order to fulfil the functions of preparing election policy costings, s. 16 provides, in summary, for the Parliamentary Budget Officer to request information from the head of any Government agency, and that the head must respond unless there is an overriding public interest against disclosure or access to information would otherwise be denied under the *Government Information (Public Access) Act 2009*.
- 4.2 In full, s. 16 provides as follows:

"16 Parliamentary Budget Officer to have access to Government agencies

(1) The Parliamentary Budget Officer may, at any time, make a request for information from the head of any Government agency to assist the Officer in the preparation of a costing of an election policy under this Act.

(2) The head of the Government agency must respond to such a request within 10 business days or such other period as is agreed between the head of the agency and the Parliamentary Budget Officer.

(3) The head of the Government agency is not required to provide information in response to such a request if there is an overriding public interest against the disclosure of the information for the purposes of the *Government Information (Public Access) Act 2009* or if access to the information would otherwise be denied under that Act. The head of the agency is to inform the Parliamentary Budget Officer of the reason for not providing the information.

(4) The head of the Government agency must not disclose any information or document provided to him or her for the purposes of a request for information from the Parliamentary Budget Officer under this section except to a member of staff of the agency.

Maximum penalty (subsection (4)): 50 penalty units."

- 4.3 The issue for determination relates specifically to the construction of s. 16(4) which prohibits the "head of the Government agency" disclosing certain information or documents, namely, information or documents provided to him or her by the Parliamentary Budget Officer for the purposes of the request, presumably information or documents about the election policy to be costed. There is an exception for disclosure to a member of staff of the agency, seemingly so that the head of the Government agency is not required to attend to all requests from the Parliamentary Budget Officer personally. Contravention of s. 16(4) carries a maximum penalty of 50 penalty units, and thus being an offence creating provision it should, as a general rule of statutory construction, be construed strictly.
- 4.4 On its plain language, the prohibition in s. 16(4) falls upon the "head of the Government agency". There is no definition of "head of the Government agency" in the *PBO Act*, nor is the term used in the Act other than in s. 16. Its ordinary meaning connotes the principal officer holder in a Government agency, and the language used, in the context of Government agencies, picks up that of the *Government Sector Employment Act 2013*. In that Act, the head of a Government sector agency is defined in s. 3(1) as "the head of the Public Service agency [which position is separately defined in that Act]... or the person who exercises employer functions in relation to the relevant staff...". Without needing to finally determine the meaning of "head of the Government agency" in s. 16, it is apparent and significant that there is no basis on the plain language of s. 16(4) to suggest that the "head of the Government agency" is broader than the officer occupying that position (to that end, note also the use of "him or her" in s. 16(4)).

- 4.5 Section 16(4) therefore does not, in my view, apply to a member of staff of the relevant Government agency. It is confined in its application to the head of such an agency. I am supported in this view by the fact that in s. 17 of the *PBO Act* the legislature has, in relation to the information and documents the subject of that section, expressly extended the application of the obligation of confidentiality beyond the Parliamentary Budget Officer to "any member of staff of the Parliamentary Budget Office" (s. 17(2)). I note that s. 17(2) is also an offence provision. This express inclusion of staff of the Parliamentary Budget Office in s. 17(2) supports the legislature's deliberate omission of such an extension to staff of a Government agency in s. 16(4).
- 4.6 Indeed, I also observe that the duty and offence in s. 16(4), applying only to the head of the Government agency, can in that respect be contrasted with other non-disclosure provisions in different legislative schemes. For example, the *Privacy and Personal Information Protection Act 1998* creates non-disclosure obligations on the public sector agency holding the relevant personal information generally (see, e.g., ss. 18, 19, 57) but also contains specific offence provisions which apply to public sector officials (who are, inter alia, employees of the public sector agencies: see s. 3(1)) and extend to "member[s] of staff" of the Privacy Commissioner (see ss. 62, 67). This example merely provides non-determinative support for my preferred construction of s. 16(4), in that it again indicates that offence provisions should expressly or by natural and ordinary language encompass the persons to whom they apply.
- 4.7 Finally, I note that I derive no assistance from the second reading speech or other secondary legislative material for the *PBO Act* in relation to construction of s. 16(4), nor are any amendments apposite.

5. Comment on obligations on staff of the agency

- 5.1. Of course, the fact that I consider the prohibition in s. 16(4) does not apply to members of staff of the Government agency, does not mean that there are no other restrictions on such staff.
- 5.2. Whilst I do prefer the above construction, it is not immediately apparent why, if the section and offence reflects a concern to ensure confidentiality in relation to such information or documents, the prohibition was not extended to staff members. It may be that imposition of the duty on the head of the Government agency was considered sufficient, with mechanisms internal to the agency preventing undue disclosure of the information.
- 5.3. Indeed, there are general obligations of employees which may have relevance to this situation. I think particularly of the duties of confidentiality and obedience, which may have application. An employee is obliged not to disclose or misuse confidential information being the property of the employer obtained by the employee in the course of employment. It may be that notifying a member of staff of the Government agency

that the s. 16(4) information is confidential and should not be disclosed to persons who are not members of staff of the agency is sufficient to enliven this obligation of confidentiality upon the member of staff. Any lawful directions given as to the treatment and use of such information must of course be obeyed by the employee. Such duties arise from the fiduciary relationship between employer and employee and the general duty of faithful service owed by an employee. (See generally Halsbury's Laws of Australia – Employee's Obligations During Employment at [165-255]-[165-280]). They are underscored by the objectives and Government sector core values outlined in the "ethical framework for the government sector" contained in Part 2 of the *Government Sector Employment Act 2013*. As such, it may be that a policy direction and other internal steps by the Government agency are sufficient to protect s. 16(4) information from disclosure, although of course such policies could not of themselves create an offence with a penalty provision equivalent to that in s. 16(4) applying to the head of the Government agency.

- 5.4 I also note that the *PBO Act* is due for review in 2015, five years from the date of assent of the Act (see s. 30), which may present an opportunity at which the application of s. 16(4) to members of staff of a Government agency could be raised.

Signed:



I V Knight
Crown Solicitor