

Submission

No 11

INQUIRY INTO THE PARLIAMENTARY BUDGET OFFICE

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PARLIAMENT of AUSTRALIA
HOUSE of REPRESENTATIVES

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24 August 2011

Committee on the Parliamentary Budget Office
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Elliott

INQUIRY INTO THE PARLIAMENTARY BUDGET OFFICE

I am writing in reply to the Committee's invitation to make a submission to the inquiry into the Parliamentary Budget Office. While we have not sought to make recommendations, we have provided some background on the Australian Parliament's consideration of these same issues in the pending establishment of its own Parliamentary Budget Office.

If you have any queries on this matter we can be contacted at ph 6277 7111, e-mail clerk.reps@aph.gov.au or PO Box 6021, Parliament House Canberra ACT 2600.

Yours sincerely

A handwritten signature in black ink that reads 'Bernard Wright'.

BERNARD WRIGHT
Clerk

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SUBMISSION FROM THE DEPARTMENT OF THE HOUSE OF REPRESENTATIVES

Background

No Australian jurisdiction other than New South Wales and the Commonwealth has moved to establish a Parliamentary Budget Office (PBO) or equivalent. At the Commonwealth level the merits of establishing a PBO have been debated at various times since the 1980s, usually with reference to the US Congressional Budget Office (CBO).¹

As part of the negotiations between the major parties and independent members following the 2010 federal election, it was agreed to establish a PBO "...to provide independent costings, fiscal analysis and research to all members of Parliament, especially non-government members", with the structure, resourcing and protocols for the Office to be subject to consideration by a parliamentary committee.²

A Joint Select Committee on the Parliamentary Budget Office (JSCPBO) was established to consider the proposal, and reported in March 2011. The Committee unanimously recommended that the position of Parliamentary Budget Officer be established as an Independent Officer of the Parliament through dedicated legislation "...to inform the Parliament by providing independent, non-partisan and policy neutral analysis on the full Budget cycle, fiscal policy and the financial implications of proposals".³

In August 2011 the Government confirmed its agreement to the Committee's recommendations (in whole or "in principle", with details to be fleshed out in subsequent legislation), having previously announced funding in the 2011-12 budget of \$29.4 million over four years to establish the PBO.⁴

A Government Bill to give effect to the PBO, the *Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2011*, was introduced on 24 August 2011 by the Federal Treasurer, the Hon Wayne Swan MP. The Bill is available on the Parliament's website.⁵ The Bill broadly gives effect to the recommendations of the Committee; while it does not expressly use the term "Independent Officer of the Parliament" in describing the Parliamentary Budget Officer, it stipulates that the Officer is not subject to direction by the Presiding Officers in the performance of his or her functions. The Bill would establish the PBO as a fourth parliamentary department under the *Parliamentary Service Act 1999*.

¹ For more detail, see Joint Select Committee on the Parliamentary Budget Office (JSCPBO), *Inquiry Into the Proposed Parliamentary Budget Office*, 2011, pp. 1-3.

² "Agreement For a Better Parliament", September 2010, Clause 16.1.

³ JSCPBO, p. 49 and p. 80.

⁴ Joint media release, the Hon Wayne Swan MP and Senator the Hon Penny Wong, "Establishment of a Parliamentary Budget Office", 10 May 2011, at <http://treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/051.htm&pageID=003&min=wms&Year=&DocType=0> (accessed August 2011).

⁵ At http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=priority,title;page=13;query=Dataset_Phrase%3A%22billhome%22%20ParliamentNumber%3A%2243%22;rec=11;resCount=Default (accessed August 2011).

On 22 August 2011 the Shadow Treasurer, the Hon Joe Hockey MP, similarly introduced a private members' Bill (the *Parliamentary Budget Office Bill 2011*) to establish the PBO. The Bill, which is also available on the Parliament's website,⁶ is again broadly in line with the recommendations of the Committee, with some exceptions noted in this submission.

Some comments against your Committee's terms of reference, based on the proposed Commonwealth PBO, follow. This submission is largely based on the findings in the JSCPBO's report, which can be accessed at <http://www.aph.gov.au/house/committee/jscpbo/index.htm> together with the Government response and the evidence to the Committee's inquiry.

The purpose of the Office

In conducting its inquiry on behalf of the Parliament, the JSCPBO noted that:⁷

- the principle of parliamentary control over the expenditure of the executive has long been recognised as the fundamental means by which the Parliament can hold the executive to account;
- notwithstanding this, in practice the executive is in a dominant position due to its access to the resources, analysis and advice of the public service, which under the *Public Service Act 1999* serves the Government of the day;
- the budget papers and associated reports are lengthy and complex documents for members of Parliament to analyse, despite ongoing efforts to improve their format and presentation;
- the annual economic and fiscal reports produced by the Treasury under the *Charter of Budget Honesty*⁸ have no presentation deadline and are not independently verified. The Intergenerational Report does not include long-term forecasts of revenues and expenditure. The costing of election commitments under the Charter only applies during the election period, and excludes minor parties and independents;
- existing parliamentary institutions, including the chamber departments and the Parliamentary Library, have limited capacity and resources to undertake detailed economic modeling and financial analysis, and expanding their role to provide such services would dilute their primary focus; and
- over time, the proportion of public expenditure authorised outside the budget process under a special or standing appropriation has grown to over 80 per cent, presenting

⁶ At http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=priority,title;page=13;query=Dataset_Phrase%3A%22billhome%22%20ParliamentNumber%3A%2243%22;rec=7;resCount=Default (accessed August 2011).

⁷ JSCPBO, pp. 14-18 and pp.21-22.

⁸ More information on the Charter is available from the Department of Finance and Deregulation at www.finance.gov.au/publications/charter-of-budget-honesty/index.html (accessed August 2011).

additional challenges to parliamentary scrutiny. Nor is there an ongoing review process for tax expenditures or tax concessions for specified activities of taxpayers. Tax expenditures are estimated to be around \$113 billion in 2009-10, equivalent to around 8.8 per cent of GDP.

The Committee's inquiry received evidence of a range of benefits from establishing a PBO, including:

- providing the Parliament with a source of high-quality, independent analysis on Budget and related matters, thereby improving the quality of parliamentary debate and enhancing decision-making;
- improving accountability and transparency;
- ensuring integrity and sustainability of fiscal policy;
- strengthening the credibility of the Budget process;
- addressing perceived bias in the role of Treasury and the Department of Finance and Deregulation (Finance) in undertaking election policy costings; and
- enhancing Australia's international reputation for good governance.⁹

Comments on the possible benefits were received from across the parliamentary departments. The Clerk of the House noted in evidence that a PBO could promote understanding on how estimates are derived, while the Clerk of the Senate noted the potential for a PBO to undertake tailored research in support of the Senate Estimates process. The Department of Parliamentary Services (DPS) noted that the broader impacts of a PBO could well outweigh the costs:

even if the enhanced deliberations of Parliament were to influence the priorities for (say) 1% of the annual budget, this would amount to some \$3 billion, which is several magnitudes greater than the operating costs contemplated for a Commonwealth PBO.¹⁰

The Committee therefore recommended that a PBO be established under dedicated legislation, and that the Parliamentary Budget Officer be an Independent Officer of the Parliament (at the Commonwealth level the Auditor-General is the only officer so recognised):

The majority of proponents for a PBO strongly supported establishing, through dedicated legislation, the office of the Parliamentary Budget Officer as an independent officer of the Parliament, similar to the Auditor-General.

⁹ JSCPBO, p. 19.

¹⁰ JSCPBO, pp. 19-21.

...establishing the independence of the Parliamentary Budget Officer and their PBO through legislation would provide for an indisputable clarity of purpose and function for the PBO and establish the powers of the PBO in regard to information collection and publishing of information. More broadly, this approach would serve to strengthen the objectivity and credibility of the office of Parliamentary Budget Officer, as well as enhance transparency of PBO operations.

Ensuring independence of the office through dedicated legislation would allow the Parliamentary Budget Officer to have control in setting the PBO's work program according to the allocated funding level and freedom in contracting-in the additional expertise, if required.¹¹

In terms of clientele, the Committee agreed that the model used for the Parliamentary Librarian would be an appropriate model for the Parliamentary Budget Officer. The *Parliamentary Service Act 1999* requires the Parliamentary Librarian to serve the Parliament "on the basis of equality of access for all Senators, Members of the House of Representatives, parliamentary committees and staff acting on behalf of Senators, Members or parliamentary committees".¹² The Committee determined that the PBO should respond to requests, within its mandate, from individual members of Parliament (and parliamentary committees) on an equal basis.

More information on the functions proposed for the Commonwealth PBO follows.

Functions

A number of contributors to the JSCPBO's inquiry stressed the importance of clear directions for any PBO on its role, the scope of its work, the extent to which its work may be self-guided and its type of outputs.¹³

One issue considered by the Committee was the appropriateness of the PBO assisting with the development of policy, for example by critiquing policies and recommendations. In evidence it was suggested that while the work of the PBO would inevitably be used for political purposes, an association with policy development in such a direct way could lend a partisan tone to its work and draw it into political debate, compromising its independence and perceived impartiality.¹⁴

By way of contrast, the work of the US CBO and the Canadian PBO strives to be policy neutral, in that their assessments generally do not seek to comment on the merits of a policy under discussion and make no normative judgments or policy recommendations.¹⁵

As already noted, the Committee ultimately recommended that the PBO provide "policy-neutral" analysis.

¹¹ JCCPBO, p. 23, p. 75 and p. 80.

¹² Paragraph 38B(2)(c).

¹³ JSCPBO, p. 25.

¹⁴ JSCPBO, p. 26.

¹⁵ JSCPBO, pp. 27-28.

The JSCPBO's Resolution of Appointment envisaged that the PBO would primarily undertake fiscal analysis, research and costings and also have a public awareness role. The Committee considered these and other possible functions as follows.

Research and analysis

In evidence to the JSCPBO's inquiry it was suggested that research and analysis of Government expenditure and fiscal policy are the most important functions of a PBO. In particular, it was considered that the PBO could add value by providing an independent explanation and analysis of Government proposals in plain language.¹⁶

The Committee recommended that:

- the PBO prepare responses to requests for research and analysis from individual members of Parliament;
- all parliamentary committees be able to request financial analysis and advice from the PBO; and
- the PBO be empowered to make submissions to committee inquiries and appear as witnesses at public hearings.

The Committee further recommended that the PBO be able to initiate its own work consistent with its mandate (for example, regular analytical reports following key Government publications), and noted that ensuring independence of the office through dedicated legislation would allow the Parliamentary Budget Officer to have control in setting the PBO's work program.¹⁷

Costing of proposals

At the Commonwealth level, the *Charter of Budget Honesty* provides for the costing of election commitments during the caretaker period for a general election. Under the Charter, the Prime Minister and the Leader of the Opposition may request Treasury and the Department of Finance, through the Prime Minister, to prepare costings of publicly-announced policies. The Charter requires that each costing is to be publicly released as soon as practicable after each request is made.

These provisions were designed to reduce the incumbency advantages of the Government, by enabling the Opposition to have access to the resources of the public service for costings during the election period. The Charter was also meant to allow the electorate to be better informed of the financial implications of election commitments.¹⁸

¹⁶ JSCPBO, p. 29.

¹⁷ JSCPBO, pp. 49-50 and p. 75.

¹⁸ JSCPBO, p. 34.

However, in practice there are a number of shortcomings with the costings system under the Charter:

- many costings are not prepared before the election, as parties can submit costing requests very late in the election period. Part of the reason for this is that the pre-election economic and fiscal outlook reports required under the Charter are not released until 10 days following the issue of writs for an election;
- the services of executive agencies are only available to the Opposition during the election period, restricting the extent to which the costings can contribute to the development of policy. However, extending the role of Treasury and Finance to providing costings during the non-election period – including Opposition policies which had not been publicly announced – would place those departments in a conflicted position;
- the requirement that requests for costings be made through the office of the Prime Minister does not engender the trust of the Opposition; and
- minor parties and independents do not have access to the costings process under the Charter, compounding their existing disadvantages in relation to resources.¹⁹

In considering whether a Commonwealth PBO should undertake policy costings, the Committee noted the significant workload, resourcing and specialist technical knowledge which would be required to undertake this function.²⁰ Treasury and Finance also noted the practical difficulties in having two separate sets of publicly-funded costings during election periods, and suggested that a more appropriate role for the Commonwealth PBO may be to analyse costings of major Government programs, and provide costings to non-government parliamentarians, outside of the election period (retaining the *Charter of Budget Honesty's* costing provisions during the election period).

The Committee received a number of suggestions to enhance the rigour of costings undertaken by the PBO and promote consistency with Treasury and Finance:

- the Commonwealth Auditor-General suggested that the PBO might consider providing a draft of its estimates to the relevant Government department for comment (in a manner similar to the Australian National Audit Office's (ANAO's) process of providing draft audit reports to agencies);
- alternatively, the PBO could act as a confidential intermediary between parliamentarians and departments to gain assistance with costings outside the election period. While this would be dependent on the co-operation of the Government, this process could enable the preparation of costings consistent with Government data and methodologies; and

¹⁹ JSCPBO, pp. 34-37 and p. 46.

²⁰ JSCPBO, pp.39-41.

- another approach put forward during the inquiry was that the PBO should not undertake costings, but work with parliamentarians in developing their proposals so that they are well-developed when they are formally submitted to Treasury and Finance for costing. The PBO could also provide independent analysis on the costings prepared by departments.²¹

The Committee stated in its report that it was:

... faced with some dilemmas in addressing the question of costings. It is recognised that the resources required to produce rigorous costings [are] significant and would be costly to reproduce by the PBO. In any case, the public benefit of duplicating the process would be highly questionable considering there would inevitably be differences in estimates produced by the PBO and those of Treasury and Finance. A public debate over the technicalities of costings methodologies does not serve the public interest.

Further, the role of Treasury and Finance would be conflicted if it were to expand its costings role during the non-election period. It is accepted that the legitimate role of Government departments is to serve the Executive. The committee also acknowledges the expertise and rigour that Treasury and Finance bring to the costings process.²²

Ultimately, the Committee proposed that in election periods, minor parties (having at least five members) and independent members of Parliament should have access to the *Charter of Budget Honesty's* provisions on election costings. The Committee noted that the Charter currently restricts requests for costings to the caretaker period, ending on polling day. This prevents the costings process from being used following an election, in the period when "...the formation of a new Government might be under negotiation by political parties and independent members".²³

The Committee therefore recommended that the Charter be amended so that the costings process is available until "...the election result is clear or, if there is a change of Government, until the new Government is appointed", so as to enable "...transparent and accountable negotiations in the event of a future hung Parliament."²⁴

The Committee recommended that the PBO, during the same time period, also be empowered to prepare costings on request for publicly-announced election commitments.²⁵ To manage demand, the Committee recommended that this service be confined to requests from nominated parliamentary party representatives and independent members of Parliament, in relation to their own policies.

²¹ JSCPBO, p. 41.

²² JSCPBO, pp. 46-47.

²³ JSCPBO, p. 48.

²⁴ JSCPBO, p. 50 and p. 48.

²⁵ JSCPBO, pp. 50-51.

The Committee also recommended that individual election commitments should not be costed by both the PBO and the Treasury/Department of Finance:

While the costings produced by the PBO may in some cases lack the rigour of those produced by Treasury and Finance, it is considered that there is a public benefit from increased accountability and transparency... in practice, the availability of an alternative policy costings service may result in the Government continuing to use Treasury and Finance for costings, while non government parliamentarians may prefer to use the PBO.

...

The committee is of the view that individual election commitments should not be costed by both the PBO and Treasury and Finance. To avoid duplication, it is expected that the PBO and Treasury and Finance would consult prior to the preparation of each costing.

Finally, the committee recognises that the functions attributed to the mandate of the PBO may produce a significant workload... the provision of election costings should be clearly established as the absolute priority during the caretaker period.²⁶

The Committee proposed that outside the caretaker period, the routine work of the PBO should include costings of proposed policies and draft legislation in response to requests from individual members of Parliament. The Committee anticipated that the preparation of costings by the PBO in non-election periods would "...provide a process for the iterative development of policy and enhance proposals well before elections are announced".²⁷

The Government's Bill contains provisions consistent with the Committee's recommendations on costings. Mr Hockey lodged a companion Bill, the *Charter of Budget Honesty Amendment Bill 2011*, to his other Bill referred to earlier. The *Charter of Budget Honesty Amendment Bill* would remove references in the Charter to policy costings for the Leader of the Opposition, which would instead be undertaken by the PBO.

Economic forecasting

During the JSCPBO's inquiry, opinion was divided as to whether the PBO should undertake an economic forecasting role. Treasury and Finance drew attention to the significant resources forecasting requires, and questioned the value of duplicating their own work in this area. Other evidence noted the danger of differences in assumptions between the PBO and Treasury being exaggerated in the media as a partisan issue, to the potential detriment of both organisations' reputations.²⁸

²⁶ JSCPBO, p. 48.

²⁷ JSCPBO, p. 46 and p. 50.

²⁸ JSCPBO, pp. 31-32.

Ultimately the Committee agreed, stating that:

Given the resource intensive nature of the work and to minimise the duplication of work produced elsewhere, the PBO should not be required to produce its own fiscal forecasts. Rather, it should provide analysis of the Government's fiscal forecasts, commenting on the assumptions, judgements and overall reliability of Government assessments.²⁹

Promotion and public awareness

The Committee considered an educational role for the PBO including, potentially, publications to help educate members of Parliament and the broader community. In evidence to the inquiry, public sector governance expert Stephen Bartos noted that a PBO could raise public awareness of important issues that have been left off the political agenda:

The independent body would be able to raise awareness of uncomfortable or difficult fiscal questions and propose tough options for dealing with them, without the Government necessarily having to take sides in that debate or commit itself prematurely to unpopular causes.³⁰

The Committee, noting its recommendation that the PBO be able to initiate its own work, observed that "it is expected that the publication of material produced by the PBO will perform a broader public awareness role".³¹

Other suggested functions

The Clerk of the Senate suggested that a PBO could play a role in identifying inappropriately-classified items in Appropriation Bill No.1,³² although expressing a preference for such analysis to continue to be undertaken by Senate officers.

Associate Professor Charles Lawson proposed that the PBO be tasked with setting the requirements for financial information provided to the Parliament by the executive, and with regulating the executive's compliance with those standards.

The Committee did not comment on either proposal, and neither is included in the Bills brought forward by the Government and the Opposition.

²⁹ JSCPBO, p. 45.

³⁰ JSCPBO, p. 42.

³¹ JSCPBO, p. 49.

³² Appropriation Bill No.1 is required to contain only appropriations for the ordinary annual services of the Government – under section 53 of the Constitution the Senate may not amend such a law – and not other items.

Powers to access and publish information

Access powers

For a PBO to properly fulfill its mandate it requires access to executive agency information. In evidence to the JSCPBO's inquiry, it was also noted that the data should be made available to the PBO at no cost, as there would otherwise be budget implications for the PBO.³³

A range of possible access-to-information powers was considered by the Committee. These included:

- legislating for full access to executive information, in a manner similar to the Auditor-General, including the power to compel production of records;
- legislating for partial access to information, consistent with existing Freedom Of Information (FOI) or public access provisions;
- accessing information through protocols such as Memoranda of Understanding (MOUs) between the PBO and relevant agencies; and
- use of the *Freedom of Information Act 1982* on the same basis as the public.³⁴

Several submitters to the JSCPBO's inquiry, including the Auditor-General, the OECD and the Canadian Parliamentary Budget Officer, expressed support for the PBO having full and free access to information held by executive agencies, possibly including cabinet documents.³⁵

However other submitters, including the Department of the House of Representatives, took a more cautious position. This Department submitted that a "request system" for information, backed by a solid and practical operational framework, would better suit the PBO's remit.³⁶

Treasury and Finance also objected to the PBO having the power to compel production of information, as this "could create conflict with the Public Service Act... which requires agency heads to manage their departments for the benefit of the Prime Minister".³⁷ The agencies expressed their preference for information protocols to be developed through a negotiated MOU.

The Clerk of the Senate put the view that given the PBO's obligations to the Parliament, the PBO's information-gathering powers should extend beyond those available to the public under FOI legislation.³⁸

³³ JSCPBO, p. 61.

³⁴ JSCPBO, pp. 62-63.

³⁵ JSCPBO, pp. 62-63.

³⁶ JSCPBO, p. 63.

³⁷ JSCPBO, p. 63.

³⁸ JSCPBO, pp. 64-65.

Mr Stephen Bartos suggested that full information-gathering powers for the PBO:

...has the danger of setting up an adversarial relationship between the office and the departments concerned. It might be that you set up a power that is a last resort sort of measure, that says that in the event it is unable to obtain access, it should be able to report to a parliamentary committee on the reasons why it has been unable to obtain access. Then that parliamentary committee might call the relevant recalcitrant department before it and say, 'Why haven't you given our PBO access to the information they need'?³⁹

A model of this type was ultimately recommended by the Committee. The Committee concluded that:

The concerns raised about providing strong powers to direct the production of information included the appropriateness of those powers for the PBO and the potential that those powers may harm the relationships the PBO has with Government agencies.

The committee considers that the PBO's relationships with Government agencies will be crucial to its success...

The committee is therefore of the view that the PBO should seek to negotiate and develop memoranda of understanding (MOU) or similar instruments (as their main formal mechanisms) with the Departments of the Treasury and of Finance and possible other departments, to share information and data.

In the event that particular information is not provided to the PBO in accordance with an MOU, and the PBO is not satisfied by the rationale of the departments for declining to disclose information, the PBO should be entitled to use the formal processes provided through the *Freedom of Information Act 1982* (Cwlth), without cost.

Should the PBO then fail in its attempt to secure departmental information through the Freedom of Information Act, it will have the further option to report the matter to the Joint Committee of Public Accounts and Audit (JCPAA), which may then choose to pursue the matter.

Access to information arrangements through a negotiated MOU and the practical application of the MOU could be closely monitored by the PBO's oversight committee, possibly addressed in the annual report of the PBO and included under the terms of reference for [an] evaluation of the PBO.⁴⁰

The Government's Bill provides for MOUs as envisaged by the Committee. Mr Hockey's Bill provides for the Parliamentary Budget Officer to have information-gathering powers largely consistent with those of the Auditor-General, including the power to compel production of documents and attendance of persons.

³⁹ JSCPBO, p. 63.

⁴⁰ JSCPBO, p. 76 and p. 81.

Confidentiality

The Auditor-General, and others, noted that the PBO's access-to-information powers would need to be complemented by strict confidentiality requirements.⁴¹ The Auditor-General suggested that a "public interest" test around the release of sensitive information, similar to that found in section 37 of the *Auditor-General Act 1997*, could be applied.⁴²

The Committee concluded that in order to strengthen the trust between the PBO and the Government agencies on which it relies to provide information, the PBO should keep sensitive information provided by departments confidential within the PBO, including withholding the release of that information to parliamentarians and committees.⁴³

The Committee added that it expected that a framework for how certain information could be used would be negotiated through the MOUs with executive agencies – for example, the PBO could use confidential information in the form of raw data as part of its analysis, but publish only aggregate figures and results.⁴⁴

According to the Committee, the intent of its proposed confidentiality framework was that:

- all relevant departments should provide as much assistance as possible for the PBO to effectively fulfil its mandate and perform its functions in serving the Parliament,
- the strict confidentiality arrangements applicable to the PBO should encourage proactive information sharing from departments, and
- this framework seeks to provide a balanced starting point which will be developed, reviewed and possibly revised over time.⁴⁵

Publication of PBO work

A related issue concerns the extent to which the PBO's work will be published. While there was a bias towards transparency in the evidence to the JSCPBO's inquiry, it was noted that in some circumstances there would be value to the PBO's clients in work being kept confidential.

The Parliamentary Library has a statutory requirement to provide confidential information, analysis and advice to its clients. The Librarian suggested that a similar requirement would be appropriate to meet the needs of the PBO's clients. The Joint Standing Committee on the Parliamentary Library concurred, noting that "core values of impartiality, timeliness and confidentiality are vital for the success of any parliamentary service".⁴⁶

⁴¹ JSCPBO, pp. 65-69.

⁴² Mr Hockey's *Parliamentary Budget Office Bill 2011* presently before the House contains such a provision.

⁴³ JSCPBO, p. 77 and p. 81.

⁴⁴ JSCPBO, p. 77.

⁴⁵ JSCPBO, p. 77.

⁴⁶ JSCPBO, p. 68.

It was also noted that the protocol under which the Parliamentary Library publishes routine output, but responds to non-routine requests from parliamentarians on a confidential basis unless otherwise agreed, allows the public to benefit from the Library's work while still permitting members to seek confidential advice.⁴⁷

The Committee recommended that, wherever possible, the PBO's work should be made public in the interests of transparency and accountability, but that responses to requests from individual parliamentarians, outside the caretaker period for general elections, should be in-confidence where the client so directs. The Committee noted the possibility that the PBO could negotiate with a client for public release of work prepared on their behalf, but with certain information about the original request withheld, including the name of the client.⁴⁸

Capacity to comment in public on PBO work

The Committee, in its report, noted that its recommendation for an independent Parliamentary Budget Officer:

...would enable the PBO to make public comments, where necessary, in regard to its findings and recommendations. Importantly, this would enable the Parliamentary Budget Officer and the PBO to establish a public profile, in line with the majority of international PBOs which are also independent of Executive Government.⁴⁹

In evidence to the JSCPBO's inquiry the provisions in the NSW legislation, under which the Parliamentary Budget Officer may make a public statement where material provided to a Member has been misrepresented in the public domain, was noted. It was suggested in evidence from the Department of the Legislative Assembly that there may be a need for the PBO to contact the client before a public statement is made, to ensure that the PBO and the client "do not end up in a war of words... through the media about any misrepresentation".⁵⁰ The Committee recommended that a provision similar to that in the NSW legislation be included in the legislation establishing the Commonwealth PBO.⁵¹

Structure, staffing and resourcing

There was broad agreement in evidence to the JSCPBO's inquiry that the PBO should be made independent, to ensure objective analysis and advice to the Parliament. However, a number of different types of PBO, with varying degrees of independence, were suggested.⁵² They included:

- a stand-alone parliamentary service agency with its own legislation, similar to the US Congressional Budget Office – this model was ultimately preferred by the Committee

⁴⁷ JSCPBO, p. 68.

⁴⁸ JSCPBO, p. 77 and pp. 81-82.

⁴⁹ JSCPBO, p. 75.

⁵⁰ JSCPBO, pp. 68-69.

⁵¹ JSCPBO, p.78 and p. 82.

⁵² JSCPBO, pp. 54-59.

and endorsed in the Government response. The Government's Bill would establish the PBO as a fourth parliamentary department under the *Parliamentary Service Act 1999*, while Mr Hockey's Bill would establish the PBO as a statutory authority under its own Act;

- establishing the PBO as an adjunct to an existing body such as the ANAO or the Productivity Commission. The possibility of establishing the PBO within the ANAO was not supported by the Auditor-General, as the focus of the ANAO's work is on past performance rather than on potential policy measures, costing projections and assumptions;
- a proposal from the Business Council of Australia to establish a permanent, independent "Commission of Budget Integrity" as a Commonwealth-owned company outside the Government, essentially as an independent fiscal policy equivalent to the Reserve Bank of Australia, the Productivity Commission or the ANAO;
- establishing the PBO within a Government department, similar to the Central Planning Bureau of the Netherlands. In evidence, the risk of divided loyalties under such an arrangement was noted;
- creating a separate authority not part of the Parliament or a Government department;
- establishing the PBO within DPS, possibly within the Parliamentary Library or as a parallel agency within DPS;
- establishing the PBO within the Parliamentary Library structure:
 - with the functions of the PBO legislated for but assigned to the Parliamentary Librarian (as the independent statutory office-holder). In evidence, Treasury and Finance suggested that legislating for the functions of the PBO, but not making the head of the PBO a statutory office-holder, could ensure clarity in the PBO reporting structure, as well as allowing economic efficiencies through the sharing of existing administrative arrangements; or
 - headed by a Parliamentary Budget Officer who would be designated as an independent statutory office-holder, but still reporting to the Parliamentary Librarian; or
 - headed by a Parliamentary Budget Officer who would be designated as an independent statutory office-holder, with that Officer and the Parliamentary Librarian having joint responsibility for the functions of the Parliamentary Library.

On these last options, the Parliamentary Librarian favoured locating the PBO within the Parliament, either as a separate agency or within the Library. She noted that the latter option would be similar to the situation that applies in Canada, where the PBO reports to the Parliamentary Librarian and is a unit within the parliamentary administration.

However, she cautioned that:

One area where a potential “misfit” could occur in transposing the Canadian PBO model into the Australian context concerns resource allocation. Under the Canadian funding arrangements the PBO and the Library of Parliament as a whole are fully independent from the Government in their operation and funding [unlike Australia]. Further, although the PBO is located within the Library of Parliament, its budget is separate from that of the library. In creating a PBO within the Australian context these funding issues will need to be considered in depth.⁵³

DPS, after consideration, expressed its support for an independent PBO, on the basis that a “stand-alone” model would avoid potential confusion about lines of accountability, and make it easier for the PBO to recruit an appropriate leader and senior staff. DPS also submitted that “budget setting should be clear for the Parliament and the new body”.⁵⁴ The Auditor-General similarly commented that the independence of his position allows him to have corporate budgetary control and set priorities for his work program, which would be hindered if a PBO were placed within the DPS structure.

Evidence endorsing an independent PBO was also received from, amongst others, the Federal Coalition, the OECD and the Canadian Parliamentary Budget Officer, the latter of whom drew on his own experience in stating that an independent PBO with a direct reporting relationship with Parliament would help free the PBO from bureaucratic interference, particularly in circumstances where the PBO’s conclusions differ from those of executive agencies.⁵⁵

The Clerk of the Senate stated in evidence that it would not be appropriate for the PBO to be located within one of the chamber departments, as the work of the PBO would be different to that of the chamber departments with limited cross-over potential. In addition, managing a PBO would require specialist financial analysis skills and experience, which to date have not been applied to the selection criteria of Clerks of the chamber departments.⁵⁶ She stated that the most highly-regarded model for a PBO is that where an independent office is enshrined in legislation, similar to the Auditor-General, although she noted that such a model might raise questions as to the Parliament’s capacity to compel production of information from a Parliamentary Budget Officer.⁵⁷

The September 2010 *Agreement For a Better Parliament* proposed that the PBO be based in the Parliamentary Library. The model ultimately proposed by the Committee, and endorsed in the Government response, would instead see the PBO established as a separate agency, rather than as a component of DPS or the Parliamentary Library. However, it is anticipated that PBO staff will be co-located with Library research staff (despite the Committee’s proposal that the PBO be located outside of, but in close proximity to, Parliament House to

⁵³ JSCPBO, pp. 55-56.

⁵⁴ JSCPBO, p. 57.

⁵⁵ JSCPBO, pp. 58-59.

⁵⁶ JSCPBO, p. 60.

⁵⁷ JSCPBO, p. 61.

ease pressure on accommodation).⁵⁸ In evidence to the Committee, the Parliamentary Librarian had advocated co-location of accommodation and a close relationship between management teams and staff in the interests of better service to members of Parliament.⁵⁹

Appointment of the Parliamentary Budget Officer and PBO staffing

A range of models for appointment and dismissal of the Parliamentary Budget Officer was canvassed in evidence to the JSCPBO. Alternatives included suggestions that the Parliamentary Budget Officer be appointed by the Presiding Officers on the recommendation of an independent officer such as the Parliamentary Service Commissioner, or on the recommendation of the secretaries of Treasury and Finance.

The Committee ultimately recommended that provisions for the appointment, dismissal and remuneration of the Auditor-General should as far as possible be applied to the Parliamentary Budget Officer (with the exception that the Parliamentary Budget Officer would be appointed for a renewable four-year term, rather than the Auditor-General's non-renewable 10-year term).⁶⁰ The Government's Bill would give effect to this recommendation; Mr Hockey's Bill provides instead that the Parliamentary Budget Officer be appointed for a term not exceeding five years.

In terms of consistency with provisions for the appointment of the Auditor-General, the *Auditor-General Act 1997* provides that the Audit Minister, when nominating a new Auditor-General, must not recommend an appointment to the Governor-General unless the proposed recommendation has first been approved by the JCPAA on behalf of the Parliament. The JCPAA's Act, in turn, provides that within 14 days of receipt of the nomination, it must either: approve or reject the nomination by absolute majority; or seek an extension of time of 30 days. Failure to reach a decision within that period shall be taken to be approval of the nomination.

The Auditor-General may then only be involuntarily removed from office on limited grounds including bankruptcy or (subject to an address by each House of the Parliament presented to the Governor-General) misbehaviour or physical or mental incapacity.

The Government's Bill gives effect to the Committee's recommendations concerning appointment (by the Presiding Officers) of the Parliamentary Budget Officer. Mr Hockey's Bill stipulates that:

- the selection panel to appoint the Parliamentary Budget Officer must comprise at least three of the Ombudsman, the Auditor-General, the Governor of the Reserve Bank of Australia, and the Chair of the Productivity Commission;

⁵⁸ JSCPBO, pp. 94-95. Mr Hockey's *Parliamentary Budget Office Bill 2011* presently before the House of Representatives stipulates that the PBO must be located in Parliament House.

⁵⁹ JSCPBO, p. 92.

⁶⁰ JSCPBO, p. 78 and p. 83.

- the panel must recommend to the Presiding Officers a short-list of at least two candidates for the position (if the Presiding Officers and their Deputies are unable to select one of the short-listed candidates, they must commence a new selection process);
- the Presiding Officers may appointing an acting Parliamentary Budget Officer during any vacancy in the position. A permanent vacancy must be filled as soon as practicable, but within six months; and
- the appointment of the Parliamentary Budget Officer could be terminated for any reason by a resolution of both Houses (in addition to other circumstances consistent with those applying to the Auditor-General).

In regards to the broader staffing of the Parliamentary Budget Office, submitters to the inquiry, including DPS, the Auditor-General, Treasury and Finance, emphasised that:

- the PBO will need to be staffed by people with specialist skills and experience in economics, government finances and public policy; high-level communication skills; the ability to work flexibly in response to clients' demands; and an understanding of the parliamentary environment, including the importance of non-partisanship;
- there is a skills shortage of the type of professionals that a PBO would generally employ;
- pay rates will need to be comparable with those of organisations such as Treasury and Finance, and the Productivity Commission; and
- if the PBO is to undertake policy costing, it may take some time to attract the right mix of in-house skills, and it may be necessary to draw more heavily on external consultants during the establishment phase.⁶¹

On this last point, submitters to the JSCPBO's inquiry considered it important that the PBO be able to engage relevant experts as required. The Canadian Parliamentary Budget Officer, for example, advised that the ability to engage academics and other external experts had proven useful in his study of the costing of Canada's military engagement in Afghanistan.⁶² The Committee, in its report, explicitly proposed that the PBO have the freedom to contract-in additional expertise, if required.⁶³

The Committee considered two options in relation to the employment of permanent PBO staff. These were to either employ staff under the *Public Service Act 1999* (the employment framework for Government departments, but also staff of the ANAO) or the *Parliamentary Service Act 1999*, which requires staff of the three parliamentary departments to provide "professional advice and support for the Parliament independently of the Executive Government of the Commonwealth".⁶⁴

⁶¹ JSCPBO, pp. 86-87 and p. 93.

⁶² JSCPBO, p. 65.

⁶³ JSCPBO, p. 75.

⁶⁴ JSCPBO, pp. 87-88.

The Committee did not make a specific recommendation on this, simply noting that further consideration of the issue was warranted.⁶⁵ As mentioned, the Government's Bill proposes that the PBO be established under the *Parliamentary Services Act 1999* as a fourth parliamentary department. Mr Hockey's Bill stipulates that PBO staff shall be employed under the *Public Service Act 1999*, broadly comparable to the situation for ANAO staff under the direction of the Auditor-General.

Resourcing

The Committee noted that funding for the PBO will need to be commensurate with its mandate and the need to attract and retain suitably-qualified staff. The Parliamentary Librarian commented that the PBO's budget would need to be significant for it to effectively perform its role, and cautioned that perceived underfunding of the PBO could be contentious as was the case in Canada.⁶⁶

The Librarian suggested funding the PBO to provide for:

- a head of office at a very senior (suggest Senior Executive Service) level;
- senior research [and] support staff (primarily senior research staff) and technical specialists...;
- external services commissioned to answer enquiries, including external specialists...;
- publications and data required to provide analysis;
- information resources; and
- running costs and consumables including support such as for personnel and finance systems.⁶⁷

The Clerks of both the House of Representatives and the Senate advocated that the PBO be funded in its own right, separate from the funding provided to the existing parliamentary departments (noting the quite distinct functions of a PBO and the core functions of the chamber departments).⁶⁸

DPS provided the Committee with three estimates for the PBO's budget. These were:

- over \$8 million per annum to employ up to 30 staff and external experts on demand. The PBO could operate as a publications model, and provide major papers commissioned by parliamentary committees, annual reports on the budget and costs of specific policy proposals. This model would not include answering questions from individual members of Parliament;

⁶⁵ JSCPBO, p. 94. Mr Hockey's Bill stipulates that staff shall be employed under the *Public Service Act 1999*.

⁶⁶ JSCPBO, pp. 89-90.

⁶⁷ JSCPBO, p. 90.

⁶⁸ JSCPBO, pp. 90-91.

- \$8 million per annum to employ up to 30 staff and external experts on demand. The PBO could undertake client requests and publications and have significant research capacity; or
- \$6 million per annum to employ up to 20 staff and external experts on demand. The PBO could undertake client requests and publications, but with limited research capacity.⁶⁹

The Committee, in its report, recommended that the PBO receive ongoing funding of not less than \$6 million per annum, with consideration being given to additional resourcing for election years.⁷⁰ As previously noted, the Government subsequently announced funding in the 2011-12 budget of \$29.4 million over four years to establish the PBO.⁷¹ Mr Hockey's Bill contains a section stipulating that "the appropriation of funds for the PBO in a non-election year must not be less than 3.5% of the departmental appropriation for the Department of the Treasury".⁷²

DPS suggested that the PBO's budget be jointly endorsed by representatives of the Parliament and the Government, to ensure that the budget remains adequate for the PBO to fulfill its mandate. In its report, the Committee recommended a role for the JCPAA in reviewing the PBO's budget estimates on behalf of the Parliament, in a manner similar to the JCPAA's current scrutiny of the Auditor-General's budget (more detail follows in the "Accountability and oversight mechanisms" section).⁷³

The Government's Bill gives effect to the Committee's recommendation. Mr Hockey's Bill stipulates that:

- the Finance Minister must consult with the Parliamentary Budget Officer to seek an agreement on the estimates of proposed expenditure for the PBO;
- if appropriation Bills are introduced which propose estimates for the PBO other than in accordance with the agreement, the Finance Minister must present a statement of reasons to each House of the Parliament; and
- the Parliamentary Budget Officer may present reports of consultations with the Finance Minister, or a statement of estimates of required expenditure, to each House of the Parliament or an authorised committee.

The Auditor-General noted that organisational efficiencies and budget savings could be gained by sharing the corporate support services of an existing agency, for example through an MOU between the PBO and that agency.⁷⁴ The JSCPBO did make a recommendation on this matter.

⁶⁹ JSCPBO, pp. 91-92.

⁷⁰ JSCPBO, pp. 94-95.

⁷¹ Joint media release, the Hon Wayne Swan MP and Senator the Hon Penny Wong, 10 May 2011.

⁷² ss 32(4).

⁷³ JSCPBO, p. 95.

⁷⁴ JSCPBO, p. 92.

Accountability and oversight mechanisms

A range of models for oversight of the PBO by the Parliament were cited in evidence to the JSCPBO's inquiry. These included: oversight through a single parliamentary committee, such as the JCPAA's relationship with the Auditor-General; each House nominating one of its existing committees to undertake the role on behalf of that House (as we understand is the case in NSW's PBO legislation); or oversight by the Presiding Officers directly.⁷⁵

Evidence to the inquiry, including from the Auditor-General himself, suggested that the relationship between the Parliament and the Auditor-General would be a useful model for the PBO, including the PBO's reporting requirements, the extent of the PBO's discretion in determining its own work program, and arrangements for determining the PBO's budget.⁷⁶

The Committee recommended that the JCPAA be tasked with parliamentary oversight of the PBO, in a manner similar to the JCPAA's existing relationship with the Auditor-General.⁷⁷ The key features of the JCPAA's relationship with the Parliamentary Budget Officer would therefore include:

- as noted earlier, the JCPAA would have a veto power over the appointment of the Parliamentary Budget Officer;
- the JCPAA would review the annual draft budget estimates of the PBO;
- the JCPAA would approve the PBO's protocols for prioritising client requests, and would be consulted on the PBO's draft work program (but with the final decisions on the work program being vested in the Parliamentary Budget Officer); and
- the JCPAA would have a role in engaging an independent organisation to undertake an evaluation of the PBO within nine months after each election is held. The expectation is that the reports of the evaluations will be tabled in Parliament and could be reviewed by the JCPAA.⁷⁸

In regard to reporting requirements, the Committee recommended that the PBO be subject to the requirements of the *Financial Management and Accountability Act 1997*, in common with other Commonwealth public sector agencies (including the parliamentary departments and the ANAO).⁷⁹ Those requirements include the production of an annual report to Parliament in an approved form, incorporating financial statements audited by the Auditor-General.

⁷⁵ JSCPBO, pp. 72-73.

⁷⁶ JSCPBO, p. 60 and p. 72.

⁷⁷ JSCPBO, p. 79.

⁷⁸ JSCPBO, pp. 79-80 and pp. 83-84.

⁷⁹ JSCPBO, p. 82.

Establishment and operation of comparable offices in other jurisdictions

The JSCPBO's report may be of some assistance to your Committee, as it comments on relevant practice in other jurisdictions, including the United Kingdom, Northern Ireland, the United States, Canada, Korea and the Netherlands.⁸⁰ Additionally, evidence to the inquiry was received from the Northern Ireland Assembly, the OECD, the UK House of Commons Scrutiny Unit, and the Canadian Parliamentary Budget Officer.

⁸⁰ See JSCPBO, pp. 18-19, pp. 26-28, pp. 30-31, pp. 38-39, pp. 44-45, p. 54, p. 58, p. 65, pp. 70-71, p. 73 and pp. 89-90.