

Submission

No 1

INQUIRY INTO THE PARLIAMENTARY BUDGET OFFICE

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The NSW Parliamentary Budget Office

Introduction

This paper examines two related matters: is there value in maintaining a NSW Parliamentary Budget Office (PBO) and are there any changes to legislation which might better justify its existence?

The first part of the paper discusses the various roles of parliamentary budget offices and of the NSW PBO and it provides a brief comment on the effectiveness of the NSW PBO. The second part consists of a more detailed report on the PBO election costing activities in 2011 and the desirability of legislative changes arising from that experience.

The paper concludes that if the NSW Parliament does not wish to strengthen the law to impose a requirement on at least the major parties to submit to the PBO for costing their announced, election-time policies, it should re-consider the value of this part of PBO's mandate. One possible conclusion is that the contribution which PBO can make to this function by informing the electorate is too uncertain to justify the expenses involved. PBO's other, advisory, role could be continued at a reduced cost to the state.

The second part of the paper discusses more closely PBO's experience in costing election promises. It identifies for consideration possible legislative changes to allow PBO to inform the electorate in a timely, accurate and comprehensive manner about the cost of and the fiscal consequences of policies proposed during general elections.

Roles of a Parliamentary Budget Office

There are a number of agencies in the world with functions which are equivalent to or significantly broader than the NSW Parliamentary Budget Office. The report of a Commonwealth Joint Select Committee, Inquiry into the Proposed Parliamentary Budget Office, tabled on 3 March 2011, briefly examines some of these (see especially its Chapter Three) and the submission to that joint committee from the Departments of the Treasury and of Finance and Deregulation - amongst other submissions - outlines the characteristics of some of these bodies.

These agencies have three broad functions. The one given most primacy by the joint committee is the provision of advice and assistance to the parliament, its members and committees on matters related to the jurisdiction's budget and its fiscal situation. This function can include a wide range of activities, including economic modelling and a review of all government financial and economic reports. The second function concerns the costing of proposals being considered by members of a legislature within and outside the election cycle. The third is a promotion and public awareness role, one advocated for the proposed Commonwealth PBO by the Commonwealth Treasury and the Department of Finance and Deregulation, to assist the community generally and parliamentarians in particular to understand economic, fiscal and financial issues facing the community.

Two Roles of NSW's PBO

NSW legislation provides a more limited role to its PBO than that envisaged for the Commonwealth by the joint select committee. It is also significantly narrower than the role of most equivalent overseas bodies. NSW's PBO may cost revenue or spending proposals submitted by parliamentary

leaders in the election period and by any member outside of that period and, with the permission of parliamentary leaders, it may publish the costs of election proposals and possibly their impact on the state's budget.

PBO may also provide economic, fiscal and financial advice, but only as requested by a member of parliament: it is specifically excluded from providing such advice to a parliamentary committee and there are no provisions enabling PBO to publish its analyses. Further, unlike that recommended for a Commonwealth PBO, there is no provision for a pro-active role to deepen community or parliamentary understanding of economic, fiscal or financial matters.

It is fair to say that the primary function envisaged for the NSW PBO when the legislation was being developed was to undertake election-time costings, although the briefing role provided by the legislation might in time become the more important task.

PBO's Costings Role

The importance of this costing issue might have reflected earlier difficulties experienced in NSW, and it might have reflected the problems faced by the Commonwealth opposition before last year's federal general election. The Commonwealth opposition complained about the publication of matters which the opposition had provided to the government for costing. It accused the Treasury of acting illegally and it advised the public that it could not trust Treasury. This was a disturbing set of events which led to inquiries by the Federal Police. The complaints presaged important potential consequences for the relationship between the Treasury, the Department of Finance and Regulation and the opposition should it have won government.

Establishing an independent, parliament-based office to avoid a potential politicisation of the NSW Treasury might be seen as the most important achievement of the NSW PBO in the context of the recent state general election. But even that outcome can be totally discounted because the opposition did not utilise these new facilities (and thus there was no threat of politicisation). Instead, the opposition persisted with its internal costing arrangements.

The PBO could have accepted opposition costing requests from early February 2011: the first staff member of PBO and the acting Parliamentary Budget Officer was appointed by presiding officers on 3 February 2011. (This was four working days after the commencement of the period set by legislation, 25 January 2011, during which election policies may have been requested.) And the PBO had access to ample resources to cost promises if costing requests were submitted in reasonable time.

The opposition's decision not to use the PBO removed the prospect of any claim that the PBO's work gave the electorate confidence in the costs and budget implications of the alternative government's promises. Moreover, the former government also failed to provide all of its announced policies in time for the PBO to report on their budget consequences.

It is clear that existing law provides no certainty that the PBO can effectively advise the electorate of the costs of or fiscal implications of election promises made by any parliamentary leader. The law does insulate state departments from threats of politicisation arising from the costing of election promises, but this outcome could have been achieved in 2011 without a PBO.

Concluding Comments on PBO's Costing Role

In the absence of remedial legislative changes, there is a high risk that PBO's costing powers will continue to be more symbolic than effective.

PBO's Role to Provide Technical Advice

This paper suggested earlier that allowing PBO to provide technical advice on economic, fiscal and financial matters as requested by a member of parliament may become its more important function.

The Commonwealth joint select committee reported at length on the mismatch between the parliament's responsibilities to oversight and approve the use of public funds and the resources available to help parliamentarians to acquit this function or to analyse the government's fiscal, financial and economic reports. In this context the committee recommended (recommendations two and three) that the Commonwealth PBO have an advising role and that it be empowered to "initiate its own work in anticipation of the interests of its clients".

A PBO can help parliamentarians understand the government's formal financial reports and budgets. It can also provide parliamentarians with advice on claims advanced by governments which have the appearances of factual analysis. And it can provide members of parliament with technical advice - as distinct from costings advice - on proposals advanced by the government.

The current legislation has made no provision for the PBO to publish briefing it provides to a member of parliament. This allows PBO briefing material to be used in a selective or tendentious manner which the PBO would be unable to correct.

If the NSW parliament continued to support this PBO briefing function, or even strengthen it, the role could develop into a facility of benefit to parliamentarians. Because this function would likely be more contentious than is typically undertaken by parliamentary library research staff, it would benefit from legislative funding protections of a kind provided to audit functions so that a government would not be able to impede this function by restricting parliamentary provisions.

Report on the Legislated Pre-election Activities of the Parliamentary Budget Officer

The following section examines activities of the PBO in preparing draft Budget Impact Statements on 11 March 2011, as required by the *Parliamentary Budget Officer Act 2010*, and published versions of such statements which were required to be released on 21 March. One of the intentions of these impact statements, and perhaps the principal intention, is that the electorate have an accurate and timely assessment of the budgetary implications of election-time policies announced on behalf of political parties and by independent parliamentarians seeking re-election.

Adequacy of Coverage of Budget Impact Statements

One Budget Impact Statement was released by PBO. It concerned some of the election time policies of the NSW Branch of the Australian Labor Party. As can publicly be determined, the statement captured less than half by volume and rather more by value of that Party's policies costed by PBO. This incomplete coverage suggests that a main aim of the legislation was not met.

It is also public knowledge that the Opposition did not submit to the PBO any election-time policy for costing. The lack of a Budget Impact Statement for what at the time was a coalition of major parties and the alternative government also suggests that the legislation did not achieve an important goal which parliament had in mind.

If it is accepted that the electorate should have an accurate and timely assessment of the costs of election promises, legislative amendments to ensure that outcome should be considered.

State legislation already affects the behaviour of political parties. The NSW parliament (through the Election Funding, Expenditure and Disclosures Act 1981) provides for registration of political parties, for the disclosure of political donations made to parties and others and for the provision of public funds for the election costs of parties and others. There is thus no principle at stake if the parliament also required political parties and others to submit their election time policies to the PBO for costing and inclusion in a Budget Impact Statement. If parliament were so minded, it could reward parties and others who put their promises to the PBO for costing by making some or all public electoral funding contingent on that practice.

It is particularly important that any law mandating the submission of announced election promises for PBO costing apply to major parties: it is likely that at least one of these major parties will have an important impact on the scope and costs of initiatives introduced after a general election, and thus have a material impact on the state budget.

It might also be important to include minor parties which from time to time have influenced the formation of a government. As we have recently seen in the Commonwealth, minor parties have had an influence on a government's post-election policies. This issue was also canvassed in the Commonwealth's joint select committee report discussed above.

If it was mandatory for *announced policies* to be submitted for costing, parliamentary leaders would still have the capacity to submit requests for policies not yet announced and thus could retain the right not to announce them if, for example, they thought the assessed costs were inappropriate.

Timeliness of Costing Requests

The statistical appendix sets out the flow of election-time costing requests (and one non-election-time request) and the responsiveness of the PBO. As can be seen from that appendix, no request was received before 10 March 2011, notwithstanding that the Parliamentary Budget Officer Act 2010 allowed request to be made after 25 January 2011 and required that the Parliamentary Budget Officer provide on 11 March a draft Budget Impact Statement on proposed election policies to the relevant parliamentary leader.

Not all proposed policies the subject of a costing request could be included in that draft report. Requests received after 5.00 pm on 11 March (and some requests received earlier) were not included. Forty-two costing requests from the NSW Branch of the Australian Labor Party were covered by the Budget Impact Statement publicly released on 21 March. Around 60 costing requests received from the NSW branch of the Australian Labor Party were not included in that Statement. They were released as individual costings on the PBO website after 21 March 2011. There were no overall budget impact assessments provided to the public after the report of 11 March was published on 21 March because the law does not provide for such additional reports.

One request from a member of parliament - also a parliamentary leader, as defined by the Act - was received prior to 11 March, but it was submitted as a non-election-time policy. (This matter is further considered below). The PBO has also published an election-time costing request (and the PBO's costing) made on 18 March by the Greens Party parliamentary leader.

Accepting requests on the afternoon of the day a report is due to be provided is atypical and probably could not be replicated for future elections. The PBO set a lenient deadline to encourage the use of the costing and reporting provisions of the Act. PBO was able to do so knowing that the Opposition had publicly advised it would not be submitting its policies for costing. Even then, late acceptance had implications for the processes followed by the PBO. The costings completed in time for inclusion in the draft Budget Impact Statement of 11 March could not have been undertaken by the PBO in the limited time available were it not for the prior costings undertaken by NSW Treasury and without the PBO having seconded Treasury staff to assist in the costing of proposed policies.

There are problems with late submission of costing requests, but these are not likely to be overcome by a legislative amendment which sets a deadline beyond which requests will not be included in draft or final Budget Impact Statements. Such a deadline would not necessarily lead to more election-time policies being included in Budget Impact Statements. Another solution is required if the apparent intention of the Act is to be met. One option would require parliamentary leaders to submit policies for costing as soon as practicable after they are announced.

Limitation of Budget Impact Statements

One issue which arose during the preparation of the draft Budget Impact Statement was whether the measures used to determine impact (for example, the increase or decrease in general government financial liabilities) could be referenced against or compared to the equivalent figure in the government's half-yearly budget report. It follows that there is a concern that the *net* result of the financial implications should also not be included in the Budget Impact Statement. (The same question can be asked of other measures of budget impact, such as the affect on capital expenditure or on the general government operating balance.) PBO took the view that a report on the budget impact would not be satisfied if only the costs or other financial implications of the promises themselves were shown in isolation. If there is any legal doubt about this course of action (one followed formerly by the NSW Treasury under repealed legislation), a legislative amendment might be needed.

There is also a weakness in publishing a report on budgetary impact in March which references budget figures which were last publicly updated in December, and for some figures, May 2010. The difficulties were particularly apparent in the recent NSW general election because at least one major transaction was completed after the mid-yearly report - the sale of electricity assets - which had a material impact on the 2010-11 Budget. The problem caused by using a stale budget update can be seen by the announcement on Monday 28 March by the new premier, Barry O'Farrell, of a 'black hole' in the state budget figures. (The issue of a black hole was considered after the election in analysis undertaken by the PBO and initially published on the web-site of the current leader of the opposition. It was also placed on the PBO website.)

Some jurisdictions require or propose to require (for example, the Commonwealth, Victoria, the ACT and Tasmania) that their treasury provide a budget update which is published a few days after the

writ for a general election is issued. The timeliness of such a budget update provides the electorate with an up-to-date assessment of the budget's likely outcome against which the financial implications of a party's promises can be considered.

The requirement that the Commonwealth Treasury issue a pre-election fiscal and budgetary statement was made notwithstanding the difficulty of preparing such a document in advance of an election which has an unknown and uncertain time. This is unlikely to be the same problem for the NSW Treasury in light of the state government's fixed term.

If an election-time budget update was provided for, there would be less need for the statement of uncommitted funds which, because it is a difficult concept to measure and it varies quickly, does not offer as satisfactory a basis for assessing election policy implications.

While such a pre-election budget assessment would make Budget Impact Statements more useful, it would not address the problem that election-time policies can be advanced for costing at any stage of the election process. Election promises submitted for costing after the currently legislated timetable for a draft Budget Impact Statement cannot lawfully be included in any Budget Impact Statement.

This limitation can be overcome if legislation allowed the PBO to publish a number of Budget Impact Statements, after having completed sequential costings of election-time policies which had been announced or which had been cleared for publication. The release of up to three budget impact assessments, on a weekly or occasional basis, as the need arose, would provide voters with a more accurate picture of budgetary impacts than is allowed under the present legislation. Another option would allow the PBO to publish an updated budget assessment with each costed policy or batch of costed policies – a running total, as it were, of budget impacts for each parliamentary leader.

Other Matters

There are several less important issues which might deserve consideration.

It is not clear whether a parliamentary leader may make a costing request which was made within the election period but which does not invoke the procedures envisaged for election-time costing requests. Another way to express this question is whether a parliamentarian is permitted to make a costing request under section 13 of the Act during the period of a general election.

At least one jurisdiction, Tasmania, is proposing a time after which there can be no more costing work undertaken. For future elections, NSW legislation limits the making of election time requests to the period starting with the presentation of the [annual] budget immediately prior to a due general election and ending when a State general election is held. But it does not definitively state that work leading to PBO costings following such requests shall cease at that election.

It seems that PBO may not publish a costing following a request, until the relevant parliamentary leader advises that the policy has been announced. This restriction on publishing a costing exists even though it is clear that the policy had been announced before the costing exercise was completed. Similarly, a parliamentary leader may withdraw a costed policy from a Budget Impact Statement even though it is clear that the policy has been announced. (Changes to the Act discussed earlier would reduce these problems.)

It is not clear whether section 15 of the Act allows the presiding officers to nominate the same (joint house) committee to which a Parliamentary Budget Officer would report. If this uncertainty is confirmed, it could be remedied by legislating a widening of the mandate of an existing statutory joint committee or by the nomination of a new statutory committee.

It seems clear that under section 17 of the Act, the PBO may not release information about the costing of a non-election time policy even if the parliamentarian requesting the costing authorises such publication. The Act suggests that publication by the PBO must be authorised or required by the Act itself. Similarly, there is no provision authorising the PBO to publish a technical briefing requested by a member of parliament, although it might be able to release a technical briefing which has previously been published by the requesting member.

That same section appears to preclude the PBO from seeking information on a costing request from other than a government agency because inquiring on a matter might of itself inadvertently indicate the nature of an issue being costed to the person from whom information is being sought.

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Statistical Appendix - Election Policy Costings for the 2011 Election

Number of costing requests received: 116

Number of costing requests completed: 115

Number of costing requests published: 111

Costing request received	Total
Thursday, 10 March 2011	38
Friday, 11 March 2011	41
Friday, 18 March 2011	6
Monday, 21 March 2011	29
Tuesday, 22 March 2011	2

Costing request completed	Total
Thursday, 10 March 2011	11
Friday, 11 March 2011	34
Monday, 14 March 2011	7
Tuesday, 15 March 2011	14
Monday, 21 March 2011	6
Tuesday, 22 March 2011	6
Wednesday, 23 March 2011	17
Thursday, 24 March 2011	15
Friday, 25 March 2011	5

Costing posted on PBO website	Total
Monday, 21 March 2011	67
Tuesday, 22 March 2011	14
Wednesday, 23 March 2011	11
Thursday, 24 March 2011	6
Friday, 25 March 2011	13

Average turnaround time from receipt to completion of costing: 3.1 days

Average turnaround time from receipt to publication on PBO website: 8.4 days

Notes

- A turnaround time of 0.5 days has been assumed when the result was less than 1 day
- The main reason for the difference between the 'Average turnaround from receipt to completion of costing' and the 'Average turnaround from receipt to publication on PBO website' is due to the fact that no costings were posted on the website until after the Budget Impact Statement was released.