

2016

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

LEGISLATIVE ASSEMBLY (PARLIAMENTARY BUDGET OFFICER) BILL 2016

EXPLANATORY STATEMENT

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INTRODUCTION

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

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

PURPOSE OF THIS BILL

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

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

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

The Bill also sets out:

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

OUTLINE OF THE PROVISIONS

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

1 Name of the Act

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

2 Commencement

The Act commences on the day after its notification day.

3 Dictionary

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

4 Notes

Notes are explanatory and are not part of the Act.

5 Object of the Act

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

6 Parliamentary Budget Officer

This states the requirement for a PBO.

7 Office of the Legislative Assembly

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

8 Parliamentary Budget Officer – independence

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

9 Parliamentary Budget Officer's annual report

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

10 Appointment

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

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

The appointment is also a disallowable instrument.

11 Acting appointment

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

12 Term of appointment

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

13 Oath or affirmation of office

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

14 Disclosure of interests

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

15 Parliamentary Budget Officer must not do inconsistent work etc

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

16 Resignation

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

17 Retirement

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

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

18 Suspension – generally

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

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

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

19 Suspension – relevant Assembly committee notice and meetings

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

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

20 Suspension – ending suspension

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

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

21 Ending of Appointment

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

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

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

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

22 Leave of Absence

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

23 Staff

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

24 Contractors

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

25 Staff not subject to direction from others

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

26 Arrangements with directorates

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

27 Delegation

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

28 Functions

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

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

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

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

29 Arrangements for obtaining information from Territory entities

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

30 Approaches etc to be used in preparing policy costings

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

31 Requests for policy costings outside pre-election periods

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

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

32 Requests for policy costings during pre-election periods

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

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

33 Pre-election period costing requests – information gathering

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

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

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

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

35 Requests relating to the budget papers

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

36 Parliamentary Budget Officer not subject to direction

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

37 Public release of policy costings etc

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

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

38 Review to be carried out after election

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

39 Appointment of reviewer

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

40 Review to be conducted as requested

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

41 Comments on proposed review report

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

42 Review report

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

43 Confidentiality

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

44 Access to documents relating to policy costing request

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

45 Protection of parliamentary budget officer etc from liability

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

46 Reports to be given to Speaker

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

47 Regulation-making power

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

48 Legislation repealed

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

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

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

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

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

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

3 May 2016