

Passed by both Houses



New South Wales

Parliamentary Budget Officer Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Parliamentary Budget Officer Bill 2010

Act No , 2010

An Act to establish and confer functions on the Parliamentary Budget Officer as an independent officer of Parliament; to provide for costings of election promises by that Officer; to repeal the *Charter of Budget Honesty (Election Promises Costing) Act 2006*; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

Clause 1 Parliamentary Budget Officer Bill 2010

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Parliamentary Budget Officer Act 2010*.

2 Commencement

- (1) Parts 1 and 2 and Schedule 1.2 commence on the date of assent to this Act.
- (2) The remainder of this Act commences on 25 January 2011.

3 Definitions

- (1) In this Act:

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

election policy costing means a costing of a publicly announced or proposed policy prepared by the Parliamentary Budget Officer under Division 2 of Part 4.

function includes a power, authority or duty, and *exercise* a function includes perform a duty.

Parliamentary Budget Officer means the Parliamentary Budget Officer appointed by the Presiding Officers under section 6.

parliamentary leader means any of the following:

- (a) the Premier,
- (b) the Leader of the Opposition,
- (c) a member of Parliament who is the recognised parliamentary leader of a registered party (other than a party, and any coalition party, whose parliamentary leader is the Premier or Leader of the Opposition),
- (d) a member of Parliament who was not an endorsed candidate of any registered party when last elected to Parliament and who is not being endorsed by any registered party for the next State general election.

pre-election half-yearly budget review means the last half-yearly review publicly released by the Treasurer before a State general election under section 8 (3) of the *Public Finance and Audit Act 1983*.

Presiding Officers means (subject to section 4) the President of the Legislative Council and Speaker of the Legislative Assembly.

registered party means a party registered under Part 4A of the *Parliamentary Electorates and Elections Act 1912*.

- (2) If a registered party that is represented in Parliament by 2 or more members of Parliament does not have a recognised parliamentary leader, one of those members who is nominated by the other members has the functions of the recognised parliamentary leader of that registered party for the purposes of this Act only. Any such nomination is to be made by notice in writing to the Parliamentary Budget Officer.
- (3) For the purposes of this Act, the date a State general election is due to be held is the day fixed for taking the poll at a general election of members of the Legislative Assembly.
- (4) A reference in this Act to a member of Parliament includes, during the period that the Legislative Assembly is dissolved or has expired, a reference to a person who was a member of Parliament immediately before that dissolution or expiry.
- (5) Notes included in this Act do not form part of this Act.

4 Presiding Officers

- (1) If a provision of this Act requires or authorises the Presiding Officers to take any action or decide any matter, the provision is taken to require or authorise the Presiding Officers only to take the action jointly or decide the matter jointly.
- (2) If the Presiding Officers were both last elected to Parliament as the endorsed candidates of the same registered party (or registered parties that are coalition parties), any such action or decision may only be taken or decided jointly with a deputy Presiding Officer designated by those Presiding Officers who was last elected to Parliament as the endorsed candidate of another registered party.
- (3) A reference in subsection (2) to a deputy Presiding Officer includes a reference to an assistant Presiding Officer if all eligible deputy Presiding Officers are absent or acting as the Presiding Officer under the *Constitution Act 1902*.

Note. Sections 22G and 31A of the *Constitution Act 1902* provide that during the absence from NSW of the President or the Speaker, the Chair of Committees of the Legislative Council (who is also the Deputy President) or the Deputy Speaker of the Legislative Assembly act for the President or the Speaker respectively.

Part 2 Parliamentary Budget Officer

5 Establishment of position of Parliamentary Budget Officer

- (1) The position of Parliamentary Budget Officer is established as an independent officer of Parliament.
- (2) The functions of the Parliamentary Budget officer are only those conferred by this or any other Act, and there are no implied rights, obligations or immunities arising from that officer being an independent officer of Parliament.

6 Appointment of Parliamentary Budget Officer

- (1) The Presiding Officers may appoint a person as Parliamentary Budget Officer.
- (2) The person appointed as Parliamentary Budget Officer must be a person selected from a list of at least 2 persons recommended by a panel comprising:
 - (a) the Ombudsman, and
 - (b) the Information Commissioner, and
 - (c) the Chairperson of the Independent Pricing and Regulatory Tribunal.
- (3) If the Presiding Officers decline to appoint a person from a list of persons recommended by the panel, the panel is required to recommend a further list.
- (4) The Parliamentary Budget Officer is to be appointed on a full-time basis. The Parliamentary Budget Officer is not to engage in paid employment outside the duties of his or her office without the approval of the Presiding Officers.

7 Term of office of Parliamentary Budget Officer

- (1) The Parliamentary Budget Officer holds office for the period of not less than 4 years and not greater than 9 years that is specified in his or her instrument of appointment.
- (2) The Parliamentary Budget Officer is eligible (if otherwise qualified) to be re-appointed.
- (3) A person cannot hold office as Parliamentary Budget Officer for a total period of more than 9 years.
- (4) Despite anything to the contrary in this section, the first person appointed as the Parliamentary Budget Officer is to be appointed for a period of 9 years, and is not eligible for re-appointment.

8 Acting Parliamentary Budget Officer

- (1) The Presiding Officers may, from time to time, appoint an acting Parliamentary Budget Officer during the absence, or a vacancy in the office, of the Parliamentary Budget Officer, and may at any time revoke any such appointment.
- (2) An acting Parliamentary Budget Officer has all the functions of the Parliamentary Budget Officer and is taken to be the Parliamentary Budget Officer.
- (3) A person appointed as the acting Parliamentary Budget Officer must be a member of the staff of the Parliamentary Budget Office.
- (4) An acting Parliamentary Budget Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Presiding Officers may from time to time determine.

9 Vacancy in office of Parliamentary Budget Officer

- (1) The office of the Parliamentary Budget Officer becomes vacant if the Officer:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Presiding Officers, or
 - (d) is removed from office by the Presiding Officers under this section, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Presiding Officers may remove the Parliamentary Budget Officer from office for misbehaviour, incapacity or incompetence.
- (3) If the office of the Parliamentary Budget Officer becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

10 Remuneration of Parliamentary Budget Officer

The Parliamentary Budget Officer is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Presiding Officers may from time to time determine.

11 Employment of staff and consultants—Parliamentary Budget Office

- (1) Parliamentary staff may be employed by the Presiding Officers to assist the Parliamentary Budget Officer to exercise his or her functions. Those staff comprise the Parliamentary Budget Office.
- (2) The members of staff of the Parliamentary Budget Office are under the joint control of the Presiding Officers.
- (3) However, directions to the members of that staff in relation to the exercise of the functions of the Parliamentary Budget Officer may only be given by:
 - (a) the Parliamentary Budget Officer, or
 - (b) another member of staff of the Parliamentary Budget Office authorised to do so by the Parliamentary Budget Officer.
- (4) The Parliamentary Budget Officer may engage consultants to assist the Officer in the exercise of his or her functions.
- (5) Any such consultant is taken, for the purposes of this Act, to be a member of staff of the Parliamentary Budget Office.

Part 3 Functions

12 Functions relating to costings of election promises

The Parliamentary Budget Officer has the functions conferred by or under Part 4 in respect of the preparation of election policy costings.

13 Functions relating to advice etc to members of Parliament

- (1) The Parliamentary Budget Officer may also, at the request of any member of Parliament:
 - (a) prepare a costing of a proposed policy of the member of Parliament, and
 - (b) provide any analysis, advice or briefing of a technical nature on financial, fiscal and economic matters (including in relation to the costing of proposals included in the State budget).
- (2) The Parliamentary Budget Officer is to inform a member of Parliament who makes a request under this section if the Officer is unable to provide the costing or information requested and provide the reasons why the costing or information cannot be provided.
- (3) If the Parliamentary Budget Officer needs more information for the purpose of responding to a request under this section, the Officer may ask the member of Parliament who made the request to provide that information in writing.
- (4) The functions of the Parliamentary Budget Officer under this section do not extend to:
 - (a) providing any analysis, advice or briefing to committees of Parliament, or
 - (b) developing policy proposals on behalf of members of Parliament.

14 Operational plan

- (1) The Parliamentary Budget Officer must prepare an operational plan that includes the following:
 - (a) the objectives of the Officer in exercising his or her functions and a broad outline of the strategies of the Officer to achieve those objectives,
 - (b) a schedule of the activities that the Officer proposes to undertake.
- (2) The operational plan must be prepared as soon as practicable after the commencement of this Part and after each State general election.
- (3) The Parliamentary Budget Officer must provide a draft of the operational plan to the Presiding Officers.

- (4) The Presiding Officers are to approve the draft plan or request the Parliamentary Budget Officer to make changes to the draft plan and submit the revised plan to the Presiding Officers for approval.
- (5) The Parliamentary Budget Officer may, with the approval of the Presiding Officers, vary an approved operational plan at any time.
- (6) The approved operational plan, and any approved variation of the plan, are required to be tabled in each House of Parliament by the Presiding Officer of that House.
- (7) The Parliamentary Budget Officer must take the operational plan into account in the exercise of his or her functions.

15 Report of the Parliamentary Budget Officer to designated parliamentary committees and monitoring by committees

- (1) The Presiding Officers are to designate a committee of the Legislative Assembly and a committee of the Legislative Council to which the Parliamentary Budget Officer is to report under this section.
- (2) The Parliamentary Budget Officer is to furnish an annual report to both designated committees, together with a copy of the current operational plan of the Parliamentary Budget Officer.
- (3) The report is to relate to the activities of the Parliamentary Budget Officer during the reporting period.
- (4) The report may include such recommendations in respect of the future activities of the Parliamentary Budget Officer and operational arrangements as he or she thinks appropriate.
- (5) The designated committees may monitor and review the operations of the Parliamentary Budget Officer and report to their respective House of Parliament on any matter relating to that Officer.

16 Parliamentary Budget Officer to have access to Government agencies

- (1) The Parliamentary Budget Officer may, at any time, make a request for information from the head of any Government agency to assist the Officer in the preparation of a costing of an election or other policy under this Act.
- (2) The head of the Government agency must respond to such a request within 10 business days or such other period as is agreed between the head of the agency and the Parliamentary Budget Officer.
- (3) The head of the Government agency is not required to provide information in response to such a request if there is an overriding public interest against the disclosure of the information for the purposes of the *Government Information (Public Access) Act 2009* or if access to the

information would otherwise be denied under that Act. The head of the agency is to inform the Parliamentary Budget Officer of the reason for not providing the information.

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

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

17 Confidentiality of information or documents relating to election policy and other costings

- (1) This section applies to any of the following information and documents:

- (a) information or documents provided to the Parliamentary Budget Officer by a parliamentary leader (or on his or her behalf) for the purposes of an election policy costing under Part 4,
- (b) information or documents provided to the Parliamentary Budget Officer by a member of Parliament (or on his or her behalf) for the purposes of a costing under this Part of any policy of the member,
- (c) information or documents prepared by the Parliamentary Budget Officer for the purposes of any such costing.

- (2) The Parliamentary Budget Officer, or any member of staff of the Parliamentary Budget Office, must not disclose any such information or document except:

- (a) in the case of an election costing request by a parliamentary leader—to that leader, or
- (b) in the case of any other costing request by a member of Parliament—to that member, or
- (c) in any case—to another member of staff of the Parliamentary Budget Office.

Maximum penalty: 50 penalty units.

- (3) This section does not apply to any information or document:

- (a) if the information or document relates to an election policy costing or election costing request that the Parliamentary Budget Officer is authorised or required to publicly release by this Act, or
- (b) if the information or document has already been lawfully published, or

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Part 3 Functions

- (c) if the person disclosing the information or document became aware of the information or obtained the document otherwise than in the course of an election policy or other costing under this Act.

Part 4 Election policy costings

Division 1 Requests for election policy costings

18 Request for election policy costings by parliamentary leaders

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

19 Period during which election policy costings may be requested

- (1) An election costing request may be made at any time during the period before a State general election is due to be held, being the period commencing on the day on which the last State budget before the election is presented to Parliament (the *pre-election period*).
- (2) For the purposes of the State general election due to be held on 26 March 2011, the pre-election period commences on 25 January 2011.

20 Withdrawal of election costing requests

- (1) A parliamentary leader may, by notice in writing given to the Parliamentary Budget Officer, withdraw any election costing request that he or she has made.

- (2) An election costing request may be withdrawn at any time before the election policy costing is provided to the parliamentary leader who made the request.

Division 2 Parliamentary Budget Officer to prepare costings of election policies

21 Parliamentary Budget Officer to prepare costings of election policies

- (1) As soon as possible after receiving an election costing request, the Parliamentary Budget Officer is to:
 - (a) prepare a costing of the policy concerned, and
 - (b) provide the costing to the parliamentary leader who made the request.
- (2) The Parliamentary Budget Officer is to inform a parliamentary leader who makes an election costing request of any costing that the Officer is unable to provide and of the reason that the costing cannot be provided.
- (3) If the Parliamentary Budget Officer needs more information for the purpose of costing a policy, the Officer may ask the parliamentary leader who made the election costing request to provide that information in writing.
- (4) A parliamentary leader is required to notify the Parliamentary Budget Officer of the public announcement by that leader of policies that have been costed by the Officer.

22 Public release of election policy costings

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

23 Budget impact statements for all costed policies

- (1) The Parliamentary Budget Officer is to prepare, during the pre-election period, a separate budget impact statement for the respective policies of each parliamentary leader that have been costed under this Part.

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- (2) A budget impact statement is to list the relevant costed policies and show:
- (a) a summary of the assessed financial impact of each costed policy, and
 - (b) the total net financial impact of all the costed policies, on the current year's State budget and on the forward estimates for the period to which the pre-election half-yearly budget review relates. The budget impact statement is also to show the impact of all the costed policies on the State's net financial liabilities.
- (3) The Parliamentary Budget Officer is to provide, on the day that is the fifteenth last day before the State general election is due to be held, a draft budget impact statement to each parliamentary leader in relation to his or her respective policies.
- Note.** For the purposes of the State general election due to be held on 26 March 2011, the draft statements are to be provided on 11 March 2011.
- (4) A parliamentary leader may, within 48 hours after being provided with a draft budget impact statement, notify the Parliamentary Budget Officer in writing of his or her final list of costed policies for inclusion in the budget impact statement.
- (5) The Parliamentary Budget Officer is to:
- (a) revise the draft budget impact statements in accordance with any such notification, and
 - (b) publicly release all the final budget impact statements on the day that is the fifth last day before the State general election is due to be held.
- Note.** For the purposes of the State general election due to be held on 26 March 2011, the final statements are to be released on 21 March 2011.
- (6) When the Parliamentary Budget Officer releases a budget impact statement, the Officer is also required to publicly release election costing requests and the election policy costings for all policies listed in the budget impact statement.

Division 3 General election costing provisions

24 Pre-election statement of uncommitted State funds

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

Clause 25 Parliamentary Budget Officer Bill 2010

Part 4 Election policy costings

25 Parliamentary Budget Officer guidelines

The Parliamentary Budget Officer may issue guidelines for the purposes of the making of election costing requests and the preparation of election policy costings and budget impact statements under this Part.

26 Revision of election policy costings and budget impact statements to correct any errors

The Parliamentary Budget Officer may revise an election policy costing or budget impact statement under this Part at any time after it is made to correct any error, and provide or release the revised costing or statement.

27 Nominee may act for parliamentary leader

Any function of a parliamentary leader under this Part may be exercised on his or her behalf by a nominee of the leader, being a person nominated by the leader from time to time by notice in writing to the Parliamentary Budget Officer.

Part 5 Miscellaneous

28 Nature of proceedings for offences

Proceedings for an offence under this Act may be dealt with summarily before the Local Court.

29 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

30 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

31 Repeal of Charter of Budget Honesty (Election Promises Costing) Act 2006 No 89

The *Charter of Budget Honesty (Election Promises Costing) Act 2006* is repealed.

Schedule 1 Amendment of other Acts

1.1 Government Information (Public Access) Act 2009 No 52

Schedule 1 Information for which there is conclusive presumption of overriding public interest against disclosure

Omit the matter relating to the *Charter of Budget Honesty (Election Promises Costing) Act 2006* from clause 1 of the Schedule.

Insert instead after the matter relating to the *Jury Act 1977*:

Parliamentary Budget Officer Act 2010—section 17
(Confidentiality of information or documents relating to election policy and other costings)

1.2 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 2 Public offices

Insert at the end of Part 2 of the Schedule:

Parliamentary Budget Officer (under the *Parliamentary Budget Officer Act 2010*)