

Parliamentary Budget Officer Act 2010 No 83

[2010-83]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Government Sector Finance Legislation (Repeal and Amendment) Act 2018 No 70 (not commenced)

Authorisation

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Parliamentary Budget Officer Act 2010 No 83



New South Wales

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.

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 either of the following:

- (a) the Premier,
- (b) the Leader of the Opposition.

pre-election budget update statement means the pre-election budget update statement prepared under section 24.

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 6 of the [Electoral Act 2017](#).

Secretary means the Secretary of the Department of Premier and Cabinet.

State general election does not include a State general election held following the dissolution of the Legislative Assembly, unless the election is to be held after the due date for the election following the expiry of the Legislative Assembly or within 1 month before that due date.

- (2) In this Act, a reference to the **commencement of the caretaker period** is a reference to the day on which the Legislative Assembly is dissolved or expires preceding the holding of a State general election.
- (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 are to appoint a person as Parliamentary Budget Officer for each State general election. Each appointment is to take effect on or as soon as practicable after 1 September immediately before the general election is due to be held.
- (2) The person appointed as Parliamentary Budget Officer must be a person selected from a list of at least 2 persons recommended by a panel comprising:
 - (a) the Ombudsman, and
 - (b) the Information Commissioner, and
 - (c) the Chairperson of the Independent Pricing and Regulatory Tribunal.
- (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 that is specified in his or her instrument of appointment. The period cannot extend for more than 3 months after the holding of the State general election for which the appointment was made.
- (2) A person appointed as Parliamentary Budget Officer for a State general election may be re-appointed for a subsequent State general election.

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, 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 before the Officer's duties with respect to the State general election for which he or she was appointed have been completed, the Presiding Officers are to appoint a person to fill the vacancy for the balance of the predecessor's term of office.

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 (Repealed)

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 appointment of the Parliamentary Budget Officer.

- (3) The Parliamentary Budget Officer must provide a draft of the operational plan to the Presiding Officers not later than 1 month after the appointment of the Parliamentary Budget Officer.
- (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 Role of Public Accounts Committee

- (1) The Public Accounts Committee of the Legislative Assembly may monitor and review the operations of the Parliamentary Budget Officer appointed for a State general election and report to Parliament on any matter relating to that Officer.
- (2) The Parliamentary Budget Officer is to provide to the Public Accounts Committee a copy of the operational plan of the Parliamentary Budget Officer as soon as practicable after it is approved by the Presiding Officers.
- (3) The Parliamentary Budget Officer is required to furnish a report to the Public Accounts Committee as soon as practicable after the holding of the State general election for which he or she was appointed. The report may include recommendations on operational arrangements and activities of the Parliamentary Budget Officer in respect of future general elections.

16 Parliamentary Budget Officer to have access to Government agencies

- (1) The Parliamentary Budget Officer may, at any time, make a request for information from the head of any Government agency to assist the Officer in the preparation of a costing of an election policy under this Act.
- (2) The head of the Government agency must respond to the request within:
 - (a) 10 business days, if the request is made before the commencement of the caretaker period, or
 - (b) 6 business days, if the request is made on or after that commencement, or
 - (c) any other period that 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.
- (3A) The Parliamentary Budget Officer may provide copies of a request under this section, and any response to that request, to the Secretary or a member of staff of the Department of Premier and Cabinet.
- (4) The head of a Government agency or any member of staff of a Government agency must not disclose any information or document provided to the head or member of staff under this section, except:
- (a) to a member of staff of the agency or the head of the agency, or
 - (b) to the Secretary or a member of staff of the Department of Premier and Cabinet.
- (5) The Secretary or a member of staff of the Department of Premier and Cabinet must not disclose any information or document provided to the Secretary or member of staff under this section, except:
- (a) to a member of staff of the Department or the Secretary, or
 - (b) to an incoming Government following a State general election, if the information or document relates to election policies of a party forming the Government.

Maximum penalty (subsections (4) and (5)): 50 penalty units.

17 Confidentiality of information or documents relating to election policy 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) (Repealed)
 - (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) (Repealed)

(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

(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 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

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

(a) a parliamentary leader is to have costed under this Part all the policies of the leader's party that are proposed to be implemented if the party is elected to Government at the next State general election and that are likely to impact on the current and relevant forward budget estimates,

(b) a parliamentary leader is to advise the Parliamentary Budget Officer in writing on the fifth last day before the State general election is due to be held that all such policies of the leader's party have been notified to the Parliamentary Budget Officer.

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

(1) A parliamentary leader may, in accordance with this Part, request the Parliamentary Budget Officer to prepare costings of publicly announced or proposed policies.

(2) An election costing request may only be made in relation to policies that are announced or proposed for implementation after the next State general election.

(3) A parliamentary leader may only make an election costing request in relation to a policy publicly announced or proposed by that leader.

(4) An election costing request may relate to proposed changes in expenditure or

revenue.

(5) An election costing request must:

(a) be in writing, and

(b) outline fully each policy to be costed, giving all relevant details for the purpose of costing the policy, and

(c) state the purpose or intention of the policy.

(6) For the purposes of this section, a policy is taken to be announced or proposed by a parliamentary leader if it is announced or proposed by a member of Parliament on behalf of the leader or of the party concerned.

19 When election policy costings to be requested

(1) Election costing requests are to be made by a parliamentary leader after the operational plan prepared by the Parliamentary Budget Officer under section 14 has been approved by the Presiding Officers and tabled in each House of Parliament. The requests are to be made in sufficient time before the State general election to enable the parliamentary leader to comply with section 18 (1A).

(2) For the purposes of subsection (1), an operational plan that is approved by the Presiding Officers during a period when a House of Parliament is not sitting is taken to have been tabled if it has been provided to the Public Accounts Committee under section 15 (2).

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 publicly released by the Parliamentary Budget Officer under this Act.

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 a separate budget impact statement for the respective policies of each parliamentary leader that have been costed under this Part.
- (2) A budget impact statement is to list the relevant costed policies and show:
 - (a) a summary of the assessed financial impact of each costed policy, and
 - (b) the total net financial impact of all the costed policies,on the current year's State budget and on the forward estimates for the period to which the pre-election half-yearly budget review relates.
- (2A) The budget impact statement is also to show, for the general government sector, the impact of all the costed policies on the following financial indicators:
 - (a) the sector budget results, identifying the difference between expenses and revenues from transactions for the sectors,
 - (b) sector capital expenditure,
 - (c) sector net lending/borrowing, identifying the financing requirement for the sectors.
- (2B) If the costed policies have an impact on the public non-financial corporations sector

or the public financial corporations sector, the budget impact statement is also to show the impact on financial indicators for that sector, as set out in subsection (2A) (a), (b) and (c).

(2C) The budget impact statement prepared under this section is also:

- (a) to show any other matters (not otherwise specified under this section) arising from costed policies that have an impact on the current year's State budget and on the forward estimates for the periods to which the pre-election half-yearly budget review and the pre-election budget update statement relate, and
 - (b) to reflect any changes to the current year's State budget and the forward estimates set out in the pre-election budget update statement.
- (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.
- (4) A parliamentary leader is, on or before the day that is the ninth last day before the State general election is due to be held, to notify the Parliamentary Budget Officer in writing of the leader's 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.
- (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.
- (7) The Parliamentary Budget Officer may publicly release revisions to a final budget impact statement following further costings of policies under this Part after the public release of the statement.

Division 3 General election costing provisions

24 Pre-election budget update statement

- (1) The Secretary of the Treasury is to publicly release, on or as soon as reasonably practicable after the commencement of the caretaker period, a pre-election budget update statement that updates the matters set out in the previous half-yearly budget review issued by the Treasurer.

- (2) The pre-election budget update statement is to contain, for the general government sector, the following:
 - (a) the revised projections for the current financial year,
 - (b) the revised forward estimates, for major aggregates, over 3 years,
 - (c) the latest economic projections for the current financial year and the 3 years for which the revised forward estimates are provided,
 - (d) an explanation of any significant variation in the revised projections, forward estimates or economic projections that were contained in the previous half-yearly budget review or budget,
 - (e) revised financial statements for the general government sector for the current financial year and the 3 years for which the revised forward estimates are provided,
 - (f) an update of any matter required to be included in the budget papers by section 8 (b) of the *Fiscal Responsibility Act 2012*.
- (3) The pre-election budget update statement is to specify the date on which it was prepared and is to be based, as far as possible, on actual results and Government decisions as at the commencement of the caretaker period.
- (4) The pre-election budget update statement is to be:
 - (a) in a format that is consistent with the format of the previous half-yearly budget review, and
 - (b) consistent with the statement of significant accounting policies and forecast assumptions in that review.

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 this Act or any Act that amends 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 (Repealed)

Schedule 1 (Repealed)