



Australian Government

Attorney-General's Department

Civil Law Division

12/16918

6 November 2012

Senator Trish Crossin
Chair
Senate Legal and Constitutional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Crossin

**Inquiry into the Freedom of Information Amendment (Parliamentary Budget Office)
Bill 2012**

I refer to the Committee's inquiry into the Freedom of Information Amendment (Parliamentary Budget Office) Bill 2012 and to your email of 12 October 2012 to the Secretary of the Attorney-General's Department requesting that, to assist the Committee in its examination of the proposed legislation, the Department make a submission addressing issues or concerns raised in other submissions published on the committee's website.

I note that the submission of the Parliamentary Budget Officer and the joint submission of Treasury and the Department of Finance and Deregulation support the Bill on the basis that the proposed amendments will ensure the confidentiality of requests for information from the Parliamentary Budget Office (PBO).

The Office of the Australian Information Commissioner (OAIC) observes that the status of the PBO as an exempt agency under the *Freedom of Information Act 1982* (FOI Act) will not be fully effective unless there is a similar exemption, as provided for in the Bill, for documents held by other government agencies that may reveal the existence of confidential communications between agencies and the PBO. It confirms that the Bill does not go further than necessary to give effect to that policy intent and corrects an unintended consequence of the narrow scope of the earlier exemption.

The OAIC characterises the proposed exemption in the Bill as similar to the provisions in the FOI Act that extend the intelligence agencies exemption to cover documents that originated with or are received from those agencies under sections 7(2A), (2B), (2C) or (2D). While the proposed exemption does give additional protection to PBO documents in some circumstances, it is not based on the intelligence agency provisions. Those provisions recognise the special character and sensitivity of information originating from intelligence agencies and apply to all intelligence agency documents held by departments.

The proposed new exemption is an express exemption for a specified category of PBO-related documents held by agencies. It will only apply to information held by departments, including

documents created by those bodies or other bodies, that relate to a confidential request made to the PBO. It does not apply to other PBO-related documents that may be held by departments.

The OAIC suggests that the open access period under the *Archives Act 1983* should be reviewed. The effect of the open access period under the Archives Act is that, upon reaching a defined age that is the open access period, access to records is regulated under the Archives Act instead of the FOI Act. When a record is in the open access period the National Archives must make the records available for public access unless an exemption under the Archives Act applies. Agencies are not excluded from the operation of the Archives Act (as they can be under the FOI Act) and the exemption rules are different to those under the FOI to reflect that the need for confidentiality reduces over time. The Archives Act was amended in 2010, as part of the FOI reforms, to bring the open access period forward from 30 years to 20 years for most Commonwealth records over a 10 year transition period that began on 1 January 2011.

While the Department recognises that the need for confidentiality for PBO documents and PBO-related documents will reduce over time, we consider that maintaining the 20 year open access period is appropriate. While the work of the PBO is directed at financial analysis and costings it may also be highly controversial and sensitive in nature. The early release of such work could reveal controversial policies put forward by senators or members that have not been, but still may be, pursued. Any reduction in the open access period would undermine the effective operation of the PBO as senators and members would be reluctant to use its services if they thought that their confidential requests would be made publicly available sooner than expected.

Yours sincerely

Richard Glenn /
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Civil Law Division