

**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC
ADMINISTRATION**

LEGISLATION COMMITTEE

Parliamentary Budget Office Bill 2010

SUBMISSION

SUBMISSION NUMBER: 2

SUBMITTER

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Ms Christine McDonald
Secretary
Finance and Public Administration References Committee
The Senate
Parliament House
CANBERRA ACT 2600

Dear Ms McDonald

PARLIAMENTARY BUDGET OFFICE BILL 2010

Thank you the opportunity to make a submission to the committee on the Parliamentary Budget Office Bill 2010. I offer the following brief comments but would be happy to elaborate further if required by the committee.

The bill establishes an independent officer, the Parliamentary Budget Officer (PBO), and the Parliamentary Budget Office. The primary function of the PBO is outlined in clause 7 of the bill while the powers of the officer are prescribed generally in clause 9.

Given that the bill is a private senator's bill and might therefore be considered more as an outline of a proposal rather than a fully-formed legislative scheme, there are nonetheless two areas which I consider require further development. The first relates to the independence of the officer and the second to the officer's powers.

Independence of the PBO

Clause 6 sets out the independence of the PBO and provides in subclause (4) that the PBO is not subject to direction from anyone in relation to specified matters. However, the Houses by resolution, committees and individual members may refer matters to the PBO (subclause 7(7)) and the PBO must have regard to the priorities of the Parliament, expressed by a resolution of either or both Houses, and to any reports of committees of either or both Houses connected to the functions of the PBO. The PBO therefore retains a discretion to undertake action on any matter so referred – or not, as the case may be – and, having had regard to any relevant committee reports, to pursue a different outcome.

The intention appears to be to place the PBO in a position of independence comparable to that enjoyed by the Auditor-General. If that is the case, then the Parliament is effectively limiting the powers it would otherwise be able to apply to the PBO; for example, to direct the PBO to produce a particular report. Because the powers of the Parliament are provided for in section 49 of the Constitution, an express legislative declaration is required to modify them. To avoid any misunderstanding, it would be preferable if the bill included such a declaration (or, as was the case with the *Auditor-General Act 1997*, an explanatory memorandum made this point explicitly).

As an aside, it seems unnecessary to include reference to the ability of the Houses, committees or individual members to refer matters to the PBO (which they could do in any case without statutory authorisation) if the PBO is not required to act on them.

Powers of the PBO

My greater concern is that the powers of the PBO should be specified in more detail than currently provided for in clause 9. The PBO will only be able to provide services to the Parliament in accordance with the objects of the bill in clause 3 if it has adequate access to information held by government. If the PBO is restricted to undertaking analysis on the basis of publicly available information, it could not provide the unique service that it is presumably being established to provide. Any other body, whether it be commercial, academic or located elsewhere in the public sector, with access to the same information as anyone else, could provide the same service either commercially or in the public interest.

Because information will be such a vital prerequisite for the PBO to function effectively, it would be preferable for the PBO to be given specific information-gathering and reporting powers. For example, the PBO needs to be able to rely on specific powers if, having requested information from government departments and agencies in accordance with paragraph 10(f), the information is not forthcoming. A simple solution would be to provide the PBO with similar powers to the Auditor-General in Part 5 of the *Auditor-General Act 1997*, and possibly with corresponding guarantees about not including sensitive information in public reports.

An alternative solution would be for the PBO to report to the Houses any difficulty in obtaining information and for the Houses (in all likelihood, the Senate) to use their inquiry powers to require the production of the information. As the committee will be aware, however, where access to information is disputed, the mechanism to deal with such disputes has never been tested to its limits and the PBO could therefore have a long wait for the information while the issues were resolved (even if recourse were to be had to an independent arbiter to advise on the dispute).

If the independence of the PBO in relation to the Parliament and the powers of the PBO to obtain information are to be clarified, I would also suggest that subclauses 6(2) and (3) be re-examined. Their effect is not particularly clear (even though I understand there are similar provisions in the *Auditor-General Act 1997*). At the least, it would be useful for the proponent of the bill to prepare an explanatory memorandum to explain the intention of provisions such as these.

Appropriations

The first line of attack on any private senator's bill is often that it is unconstitutional and that it cannot be introduced in the Senate because it imposes taxation or appropriates money, contrary to section 53 of the Constitution. The committee should be aware that clause 31 of the bill is not an appropriation. It refers to an appropriation occurring elsewhere and follows the standard formulation used in the Senate. If the clause were an appropriation within the meaning of section 53, it would contain words to the effect that "the Consolidated Revenue Fund is appropriated" for the purposes of the Act, or some such similar formulation. The words used in subclause 31(1) are in fact an explicit recognition that a bill appropriating money may not originate in the Senate. I note that other provisions in clause 31 are similar to provisions in the *Auditor-General Act 1997*.

Conclusion

As a mechanism for providing the Parliament with independent analysis and advice about the Budget and major policy announcements, the bill has some potential flaws. However, the bill's aim to improve the quality of information provided to the Parliament to underpin its legislative and scrutiny work is surely unexceptionable.

Please let me know if I can provide the committee with any further information.

Yours sincerely

(Rosemary Laing)