



Parliamentary Counsel Act 1970

No. 8, 1970 as amended

Compilation start date: 1 July 2014

Includes amendments up to: Act No. 62, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Parliamentary Counsel Act 1970* as in force on 1 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 14 July 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act to establish an Office of Parliamentary Counsel, and for purposes connected therewith

1 Short title

This Act may be cited as the *Parliamentary Counsel Act 1970*.

2 Office of Parliamentary Counsel

- (1) There is hereby established an Office to be known as the Office of Parliamentary Counsel.
- (2) There shall be a First Parliamentary Counsel and 2 Second Parliamentary Counsel.
- (3) The Office of Parliamentary Counsel shall consist of the First Parliamentary Counsel, the Second Parliamentary Counsel and the staff referred to in section 16.
- (4) The First Parliamentary Counsel shall, under the Minister, control the Office of Parliamentary Counsel.
- (5) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) the Office of Parliamentary Counsel is a listed entity; and
 - (b) the First Parliamentary Counsel is the accountable authority of the Office; and
 - (c) the persons referred to in subsection (3) are officials of the Office; and
 - (d) the purposes of the Office include the functions of the Office referred to in section 3.

3 Functions of the Office of Parliamentary Counsel

- (1) The functions of the Office of Parliamentary Counsel are:
 - (a) the drafting of proposed laws for introduction into either House of the Parliament; and
 - (b) the drafting of amendments of proposed laws that are being considered by either House of the Parliament; and

- (c) the drafting of subordinate legislation; and
 - (d) the preparing of compilations and reprints of, and information relating to, laws of the Commonwealth; and
 - (e) the publishing, and the making of arrangements for the printing and publishing, of:
 - (i) laws, and proposed laws, of the Commonwealth; and
 - (ii) compilations and reprints of laws of the Commonwealth; and
 - (iii) information relating to laws of the Commonwealth; and
 - (f) the preparing and publishing of Government Notices Gazettes, including Special and Periodic Gazettes; and
 - (g) functions conferred on the Office (or on First Parliamentary Counsel) under the *Acts Publication Act 1905*, the *Legislative Instruments Act 2003* and any other laws of the Commonwealth; and
 - (h) with the written approval of the Minister—the provision of assistance to a foreign country in relation to the drafting, printing or publishing of laws of the country or information relating to those laws; and
 - (i) functions conferred by the regulations; and
 - (j) functions incidental to any of the preceding functions.
- (2) The fact that an activity is within the functions of the Office of Parliamentary Counsel does not of itself exclude other persons or bodies from engaging in the activity. However, directions under section 55ZF of the *Judiciary Act 1903* may affect the extent to which other persons or bodies may engage in the activity.
- (3) An approval under paragraph (1)(h) is not a legislative instrument.
- (4) In this section:

laws of the Commonwealth include Acts and subordinate legislation.

publishing includes publishing electronically.

subordinate legislation includes:

- (a) Ordinances, Proclamations, regulations, rules and other legislative instruments made under laws of the Commonwealth; and
- (b) other instruments that:
 - (i) are made under laws of the Commonwealth; or
 - (ii) have or are given the force of Commonwealth law; or
 - (iii) are otherwise related to, or have effect for the purposes of, laws of the Commonwealth.

4 Appointment of First and Second Parliamentary Counsel

- (1) The First Parliamentary Counsel and the Second Parliamentary Counsel shall be appointed by the Governor-General.
- (2) A person is not eligible for appointment as the First Parliamentary Counsel or as a Second Parliamentary Counsel unless the person is a barrister, a solicitor, a barrister and solicitor or a legal practitioner of the High Court or of the Supreme Court of a State or Territory of not less than 5 years' standing.

5 Tenure of office

- (1) Subject to this Act, the First Parliamentary Counsel and the Second Parliamentary Counsel hold office for such periods, not exceeding 7 years, as are respectively specified in the instruments of their appointments and on such terms and conditions as the Governor-General determines, but are eligible for re-appointment.

6 Remuneration and allowances

- (1) The First Parliamentary Counsel and the Second Parliamentary Counsel shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) The First Parliamentary Counsel and the Second Parliamentary Counsel shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

7 Leave of absence

- (1) The First Parliamentary Counsel and a Second Parliamentary Counsel have such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the First Parliamentary Counsel and a Second Parliamentary Counsel leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

8 Resignation

The First Parliamentary Counsel or a Second Parliamentary Counsel may resign by writing signed and delivered to the Governor-General.

9 First or Second Parliamentary Counsel not to undertake other work

The First Parliamentary Counsel or a Second Parliamentary Counsel shall not engage in practice as a barrister or solicitor or engage in paid employment outside the duties of his or her office.

10 Termination of appointment

- (1) The Governor-General may terminate the appointment of the First Parliamentary Counsel or of a Second Parliamentary Counsel for physical or mental incapacity.
- (2) The Governor-General shall terminate the appointment of the First Parliamentary Counsel or of a Second Parliamentary Counsel if:
 - (a) he or she absents himself or herself from duty for 14 consecutive days, or for 28 days in any 12 months, except on leave of absence;
 - (b) he or she is guilty of misbehaviour; or
 - (c) he or she 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.

14 Oath or affirmation of allegiance and office

- (1) The First Parliamentary Counsel or a Second Parliamentary Counsel shall not perform the duties of the office unless he or she has made an oath or affirmation in relation to that office in accordance with the form of oath or affirmation in the Schedule.
- (2) The oath or affirmation shall be made before a justice of the peace or a commissioner for taking affidavits.

15 Acting appointments

- (1) The Minister may appoint a person who is eligible for appointment as the First Parliamentary Counsel to act in the office of First Parliamentary Counsel:
 - (a) during a vacancy in that office; or
 - (b) during any period, or during all periods, when the person holding that office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister may appoint a person who is eligible for appointment as a Second Parliamentary Counsel to act in an office of Second Parliamentary Counsel:
 - (a) during a vacancy in that office; or
 - (b) during any period, or during all periods, when the person holding an office of Second Parliamentary Counsel is absent from duty or from Australia, is acting in the office of First Parliamentary Counsel or is, for any other reason, unable to perform the functions of his or her office of Second Parliamentary Counsel.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

16 Staff

- (1) The staff required for the purposes of this Act shall be persons engaged under the *Public Service Act 1999*.

- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the First Parliamentary Counsel and the APS employees assisting the First Parliamentary Counsel together constitute a Statutory Agency; and
 - (b) the First Parliamentary Counsel is the Head of that Statutory Agency.

16B Charging of fees

- (1) The Office of Parliamentary Counsel may, on behalf of the Commonwealth, charge fees for things done in the performance of the Office's functions, other than the functions covered by paragraphs 3(1)(a) and (b).
- (2) A fee charged under subsection (1) must not be such as to amount to taxation.
- (3) A fee charged under subsection (1):
 - (a) is a debt due to the Office of Parliamentary Counsel, on behalf of the Commonwealth; and
 - (b) is recoverable by the Office of Parliamentary Counsel, on behalf of the Commonwealth, in a court of competent jurisdiction.

16C Notional payment of fees by the Commonwealth

- (1) The purpose of this section is to ensure that fees under section 16B are notionally payable by the Commonwealth (or parts of the Commonwealth).
- (2) The Minister responsible for administering the *Public Governance, Performance and Accountability Act 2013* may give written directions for the purpose of this section, including directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.
- (3) A direction under subsection (2) is not a legislative instrument.

17 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Schedule

Sections 14 and 15

OATH

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of

So help me God!

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Endnotes

Endnote 1—About the endnotes

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Parliamentary Counsel Act 1970	8, 1970	15 May 1970	12 June 1970	
Salaries Act 1971	22, 1971	4 May 1971	14 Jan 1971 (<i>see</i> s 2)	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973 (<i>see</i> s 2)	ss. 9(1) and 10
Statute Law Revision Act 1981	61, 1981	12 June 1981	s. 115: 12 June 1981 (<i>see</i> s 2(1))	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	s. 3: 18 July 1983 (<i>see</i> s 2(1))	—
Public Service Reform Act 1984	63, 1984	25 June 1984	s. 151(1): 1 July 1984 (<i>see</i> s 2(4) and <i>Gazette</i> 1984, No. S245)	s. 151(9)
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	s. 3: 3 June 1988 (<i>see</i> s 2(1))	s. 5(1), (5)
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s. 31: 10 Dec 1991 (<i>see</i> s 2(3) and <i>Gazette</i> 1991, No. S332)	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (item 118): 25 Oct 1996 (<i>see</i> s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 725–727): 5 Dec 1999 (<i>see</i> s 2(1), (2) and <i>Gazette</i> 1999, No. S584)	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001 (<i>see</i> s 2(1))	Sch. 1 (item 97)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 4 (item 412): 4 July 2008 (<i>see</i> s 2(1) item 64)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 903, 904) and Schedule 3 (items 10, 11): 27 Dec 2011 (<i>see</i> s 2(1) items 7, 12)	Sch. 3 (items 10, 11)
Parliamentary Counsel and Other Legislation Amendment Act 2012	107, 2012	22 July 2012	Schedule 1: 1 Oct 2012 (<i>see</i> s 2(1) item 2 and F2012L01963)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 65) and Sch 11 (items 34, 35): 1 July 2014 (<i>see</i> s 2(1) item 6)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s. 2	am. No. 61, 1981; No. 38, 1988; No 62, 2014
s. 3	am. No. 216, 1973; No. 39, 1983; No. 38, 1988; No. 107, 2012
s. 4	am. No. 216, 1973; No. 61, 1981; No. 38, 1988
s. 5	am. No. 61, 1981; No. 38, 1988; No. 159, 2001
s. 6	am. No. 22, 1971 rs. No. 61, 1981 am. No. 43, 1996
s. 7	am. No. 38, 1988 rs. No. 122, 1991 am. No. 146, 1999
s. 8	rs. No. 38, 1988
s. 9	am. No. 38, 1988
s. 10	am. No. 61, 1981; No. 38, 1988; No. 122, 1991; No. 73, 2008
s. 11	am. No. 216, 1973 rep. No. 61, 1981
s. 12	rep. No. 61, 1981
s. 13	rep. No. 216, 1973
s. 14	am. No. 61, 1981; No. 38, 1988
s. 15	rs. No. 61, 1981 am. No. 38, 1988; No. 46, 2011
Notes to s. 15(1), (2)	ad. No. 46, 2011
s. 16	am. No. 61, 1981; No. 63, 1984; No. 38, 1988; No. 146, 1999
s. 16A.....	ad. No. 39, 1983 am. No. 38, 1988 rep No 62, 2014
s. 16B.....	ad. No. 107, 2012
s. 16C.....	ad. No. 107, 2012 am No 62, 2014

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]