

Parliamentary Counsel

No. 8 of 1970

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

[Assented to 15 May 1970]

[Date of commencement 12 June 1970]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

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

2.—(1.) There is hereby established an Office to be known as the Office of Parliamentary Counsel. Office of
Parliamentary
Counsel.

(2.) There shall be a First Parliamentary Counsel and two 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 of this Act.

(4.) The First Parliamentary Counsel shall, under the Attorney-General, control the Office of Parliamentary Counsel.

Functions of
the Office of
Parliamentary
Counsel.

3. The functions of the Office of Parliamentary Counsel are—

- (a) the drafting of proposed laws for introduction into either House of the Parliament;
- (b) the drafting of amendments of proposed laws that are being considered by either House of the Parliament;
- (c) the drafting of Ordinances, regulations, rules, proclamations and other legislative instruments;
- (d) the drafting of other instruments, being instruments that are to have or be given the force of law or are otherwise related to legislation;
- (e) the making of arrangements for the printing of laws of the Commonwealth and Territories of the Commonwealth including the reprinting of such laws with amendments; and
- (f) functions incidental to any of the preceding functions.

Appointment
of First and
Second
Parliamentary
Counsel.

4.—(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 he 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 the Commonwealth of not less than five years' standing.

Tenure of
office.

5.—(1.) Subject to this Act, the First Parliamentary Counsel and the Second Parliamentary Counsel hold office for such periods, not exceeding seven 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.

(2.) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as the First Parliamentary Counsel or as a Second Parliamentary Counsel, and a person shall not be appointed or re-appointed as the First Parliamentary Counsel or as a Second Parliamentary Counsel for a period that extends beyond the date on which he will attain the age of sixty-five years.

Salary
and
allowances.

6.—(1.) The First Parliamentary Counsel and the Second Parliamentary Counsel shall be paid salary at such respective rates, and annual allowances (if any) at such respective rates, as the Parliament provides, but until the first day of January, One thousand nine hundred and seventy-one, those salaries and those allowances shall be as are prescribed.

(2.) The First Parliamentary Counsel and the Second Parliamentary Counsel shall be paid such other allowances as are prescribed.

Leave of
absence.

7. The Attorney-General may grant leave of absence to the First Parliamentary Counsel or to a Second Parliamentary Counsel upon such terms and conditions as to remuneration or otherwise as the Attorney-General determines.

8. The First Parliamentary Counsel or a Second Parliamentary Counsel may resign his office by writing under his hand delivered to the Governor-General but the resignation does not have effect until accepted by the Governor-General. **Resignation.**

9. 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 office. **First or Second Parliamentary Counsel not to undertake other work.**

10.—(1.) The Governor-General may terminate the appointment of the First Parliamentary Counsel or of a Second Parliamentary Counsel for physical or mental incapacity. **Termination of appointment.**

(2.) The Governor-General shall terminate the appointment of the First Parliamentary Counsel or of a Second Parliamentary Counsel if—

- (a)** he absents himself from duty for fourteen consecutive days, or for twenty-eight days in any twelve months, except on leave granted by the Attorney-General;
- (b)** he is guilty of misbehaviour; or
- (c)** he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

11.—(1.) If a person appointed to the office of First Parliamentary Counsel or Second Parliamentary Counsel was, immediately before his appointment, an officer of the Public Service of the Commonwealth— **Rights of public servant appointed as First or Second Parliamentary Counsel.**

- (a)** he retains his existing and accruing rights;
- (b)** for the purpose of determining those rights, his service as First Parliamentary Counsel or Second Parliamentary Counsel shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c)** the *Officers' Rights Declaration Act 1928–1969* applies as if this Act and this section had been specified in the Schedule to that Act.

(2.) If a person appointed to the office of First Parliamentary Counsel was, immediately before his appointment, a Second Parliamentary Counsel and was, immediately before his appointment as a Second Parliamentary Counsel, an officer of the Public Service of the Commonwealth—

- (a)** he retains his existing and accruing rights;
- (b)** for the purpose of determining those rights, his service as the First Parliamentary Counsel and as a Second Parliamentary Counsel shall be taken into account as if it were service in the Public Service of the Commonwealth; and

(c) the *Officers' Rights Declaration Act 1928–1969* applies as if this Act and this section had been specified in the Schedule to that Act.

Application of
Superannuation
Act.

12. For the purposes of sub-sections (3A.) and (4.) of section 4 of the *Superannuation Act 1922–1969*, the First Parliamentary Counsel and the Second Parliamentary Counsel shall each be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office.

Application of
Commonwealth
Employees'
Compensation
Act.

13. The *Commonwealth Employees' Compensation Act 1930–1969* applies to the First Parliamentary Counsel and to the Second Parliamentary Counsel as if they were employees within the meaning of that Act.

Oath or
affirmation of
allegiance and
office.

14.—(1.) The First Parliamentary Counsel or a Second Parliamentary Counsel shall not perform the duties of his office unless he has made an oath or affirmation in relation to that office in accordance with the form of oath or affirmation in the Schedule to this Act.

(2.) The oath or affirmation shall be made before a justice of the peace or a commissioner for taking affidavits.

Acting
appointments.

15.—(1.) Where the person holding the office of First Parliamentary Counsel is, or is expected to be, absent from duty or there is a vacancy in that office, the Governor-General may appoint a person who is eligible for appointment to that office to act in that office during the absence or until the filling of the vacancy, as the case may be.

(2.) Where a person holding an office of Second Parliamentary Counsel is, or is expected to be, absent from duty or is acting in the office of First Parliamentary Counsel, or there is a vacancy in an office of Second Parliamentary Counsel, the Governor-General may appoint a person who is eligible for appointment as a Second Parliamentary Counsel to act in that office during the absence, while the person who holds that office continues to act in the office of First Parliamentary Counsel or until the filling of the vacancy, as the case may be.

(3.) Where a person has been appointed to act in the office of First Parliamentary Counsel or in an office of Second Parliamentary Counsel otherwise than during a vacancy in that office and the person who holds that office ceases to hold office during the period of the appointment, the appointment shall be deemed to continue until it is terminated by the Governor-General.

(4.) The Governor-General may at any time terminate an appointment under this section.

(5.) Sections 7, 8, 13 and 14 of this Act apply in relation to a person appointed under this section to act in the office of First Parliamentary Counsel or in an office of Second Parliamentary Counsel in like manner

as they apply in relation to the First Parliamentary Counsel or a Second Parliamentary Counsel, as the case may be.

(6.) Subject to this section, a person appointed under this section to act in the office of First Parliamentary Counsel or in an office of Second Parliamentary Counsel holds office on such terms and conditions as the Governor-General determines.

16.—(1.) The staff required for the purposes of this Act shall be **Staff.** persons appointed or employed under the *Public Service Act 1922–1968*.

(2.) The First Parliamentary Counsel has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922–1968* so far as those powers relate to the branch of the Public Service of the Commonwealth comprising the staff referred to in the last preceding sub-section as if that branch were a separate Department of the Public Service of the Commonwealth.

(3.) For the purposes of sub-sections (5.) and (6.) of section 25 of the *Public Service Act 1922–1968*, the First Parliamentary Counsel shall be deemed to be a Permanent Head.

17. The Governor-General may make regulations, not inconsistent **Regulations.** 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