Parliamentary Counsel Act 1970

Act No. 8 of 1970 as amended

This compilation was prepared on 27 March 2012
taking into account amendments up to Act No. 46 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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The Schedule 6

OATH 6

AFFIRMATION 6

Notes 7

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

1 Short title [*see* Note 1]

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.

3 Functions of the Office of Parliamentary Counsel

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; and

(c) functions incidental to the functions referred to in paragraphs (a) and (b).

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.

16A Annual report

(1) The First Parliamentary Counsel shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of the operations of the Office of Parliamentary Counsel during the year that ended on that 30 June.

(2) The Minister shall cause a copy of a report furnished under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

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

Notes to the *Parliamentary Counsel Act 1970*

Note 1

The *Parliamentary Counsel Act 1970* as shown in this compilation comprises Act No. 8, 1970 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 1 October 2001 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Parliamentary Counsel Act 1970	8, 1970	15 May 1970	12 June 1970	
Salaries Act 1971 (a)	22, 1971	4 May 1971	14 Jan 1971	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
Statute Law Revision Act 1981	61, 1981	12 June 1981	S. 115: Royal Assent *(b)*	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	S. 3: 18 July 1983 *(c)*	—
Public Service Reform Act 1984	63, 1984	25 June 1984	S. 151(1): 1 July 1984 (*see Gazette* 1984, No. S245) *(d)*	S. 151(9)
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	S. 3: Royal Assent *(e)*	S. 5(1), (5)
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (*see Gazette* 1991, No. S332) Remainder: Royal Assent	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (item 118): Royal Assent *(f)*	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 725–727): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(g)*	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [*see* Table A]
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 4 (item 412): 4 July 2008	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 903, 904) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11) [*see* Table A]

Act Notes

(a) The *Salaries Act 1971* was repealed by section 7 of the *Statute Law Revision Act 1973*. That section provides that the repeal does not affect the operation of any amendment made by the repealed Act or any provision made by it for the citation of an Act as so amended.

(b) The *Parliamentary Counsel Act 1970* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:

> (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(c) The *Parliamentary Counsel Act 1970* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(1) of which provides as follows:

> (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(d) The *Parliamentary Counsel Act 1970* was amended by subsection 151(1) of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:

> (4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

(e) The *Parliamentary Counsel Act 1970* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1988*, subsection 2(1) of which provides as follows:

> (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(f) The *Parliamentary Counsel Act 1970* was amended by Schedule 4 (item 118) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:

> (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(g) The *Parliamentary Counsel Act 1970* was amended by Schedule 1 (items 725–727) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

> (1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.
>
> (2) Subject to this section, this Act commences at the commencing time.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 2	am. No. 61, 1981; No. 38, 1988
S. 3	am. No. 216, 1973; No. 39, 1983; No. 38, 1988
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

Table A

Application, saving or transitional provisions

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.