Parliamentary Counsel Act 1970

No. 8, 1970

Compilation No. 11

Compilation date:	5 March 2016
Includes amendments up to:	Act No. 10, 2015
Registered:	17 May 2016

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2016C00473 registered 17/05/2016

About this compilation

This compilation

This is a compilation of the *Parliamentary Counsel Act 1970* that shows the text of the law as amended and in force on 5 March 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

1	Short title	1
2	Office of Parliamentary Counsel	1
3	Functions of the Office of Parliamentary Counsel	1
4	Appointment of First and Second Parliamentary Counsel	3
5	Tenure of office	3
6	Remuneration and allowances	3
7	Leave of absence	4
8	Resignation	4
9	First or Second Parliamentary Counsel not to undertake other work	4
10	Termination of appointment	4
14	Oath or affirmation of allegiance and office	5
15	Acting appointments	5
16	Staff	6
16B	Charging of fees	6
16C	Notional payment of fees by the Commonwealth	6
17	Regulations	7

The Schedule 8

OATH 8

AFFIRMATION 8

Endnotes 9

Endnote 1—About the endnotes 9

Endnote 2—Abbreviation key 11

Endnote 3—Legislation history 12

Endnote 4—Amendment history 15

Endnote 5—Editorial changes 17

Authorised Version C2016C00473 registered 17/05/2016

Authorised Version C2016C00473 registered 17/05/2016

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

Authorised Version C2016C00473 registered 17/05/2016

(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 *Legislation 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.

Authorised Version C2016C00473 registered 17/05/2016

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.

Authorised Version C2016C00473 registered 17/05/2016

(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

Authorised Version C2016C00473 registered 17/05/2016

(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.

Authorised Version C2016C00473 registered 17/05/2016

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).

Authorised Version C2016C00473 registered 17/05/2016

(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.

Authorised Version C2016C00473 registered 17/05/2016

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

Authorised Version C2016C00473 registered 17/05/2016

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key 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 (or will amend) the compiled law. The information includes commencement details for amending laws and details of any 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 (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2016C00473 registered 17/05/2016

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2016C00473 registered 17/05/2016

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2016C00473 registered 17/05/2016

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 (*see* s 2)	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973 (*see* s 2)	ss. 9(1) and 10
Statute Law Revision Act 1981	61, 1981	12 June 1981	s. 115: 12 June 1981 (*see* s 2(1))	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1983	39, 1983	20 June 1983	s. 3: 18 July 1983 (*see* s 2(1))	—
Public Service Reform Act 1984	63, 1984	25 June 1984	s. 151(1): 1 July 1984 (*see* s 2(4) and *Gazette* 1984, No. S245)	s. 151(9)
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	s. 3: 3 June 1988 (*see* s 2(1))	s. 5(1), (5)
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s. 31: 10 Dec 1991 (*see* s 2(3) and *Gazette* 1991, No. S332)	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (item 118): 25 Oct 1996 (*see* s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 725–727): 5 Dec 1999 (*see* s 2(1), (2) and *Gazette* 1999, No. S584)	—

Authorised Version C2016C00473 registered 17/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001 (*see* s 2(1))	Sch. 1 (item 97)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 4 (item 412): 4 July 2008 (*see* 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 (*see* 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 (*see* 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), Sch 11 (items 34, 35) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

Authorised Version C2016C00473 registered 17/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (item 157, 166–179): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–179)
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (items 1, 6): 5 Mar 2016 (s 2(1) item 8)	Sch 3 (item 6)

Authorised Version C2016C00473 registered 17/05/2016

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; No 10, 2015
	ed C11
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
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

Authorised Version C2016C00473 registered 17/05/2016

Endnote 4—Amendment history

Provision affected	How affected
	am No 62, 2014

Authorised Version C2016C00473 registered 17/05/2016

Endnote 5—Editorial changes

In preparing this compilation for registration, the editorial change set out below were made under the *Legislation Act 2003*.

Paragraph 3(1)(g)

Kind of editorial change

The amendment from Act No. 10, 2015 Schedule 1 (item 157) creates two consecutive occurrences of the word "the" in paragraph 3(1)(g).

Details of editorial change

To remove one of the consecutive occurrence of the word "the" in paragraph 3(1)(g).

This compilation was editorially changed to omit the word "the" to give effect to the amendment as intended.

Authorised Version C2016C00473 registered 17/05/2016