





# **Parliamentary Counsel and Other Legislation Amendment Act 2012**

**No. 107, 2012**

**An Act to confer additional functions on the Office  
of Parliamentary Counsel, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## **An Act to confer additional functions on the Office of Parliamentary Counsel, and for related purposes**

*[Assented to 22 July 2012]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Parliamentary Counsel and Other  
Legislation Amendment Act 2012*.

## **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 July 2012
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Main amendments**

### *Parliamentary Counsel Act 1970*

#### **1 Section 3**

Omit “The functions”, substitute “(1) The functions”.

#### **2 At the end of paragraph 3(a)**

Add “and”.

#### **3 Paragraph 3(c)**

Repeal the paragraph, substitute:

- (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.

#### **4 At the end of section 3**

Add:

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- (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.

## 5 After section 16A

Insert:

### 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 *Financial Management and Accountability Act 1997* 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.

## Schedule 2—Other amendments

### Part 1—Amendments

#### *Acts Publication Act 1905*

##### **1 Section 1A**

Insert:

*First Parliamentary Counsel* means the person appointed to the position of First Parliamentary Counsel under subsection 4(1) of the *Parliamentary Counsel Act 1970*.

##### **2 Section 1A (definition of *Secretary*)**

Repeal the definition.

##### **3 Subsection 4(1)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

##### **4 Subsection 4(2)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

##### **5 Subsection 4(3)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

##### **6 Subsection 8(1)**

Omit “Secretary” (wherever occurring), substitute “First Parliamentary Counsel”.

##### **7 Subsection 8(2)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

#### *Family Law Act 1975*

##### **8 Subsection 123(2A)**

Omit “Department”, substitute “Office of Parliamentary Counsel (established by subsection 2(1) of the *Parliamentary Counsel Act 1970*)”.

### ***Federal Court of Australia Act 1976***

#### **9 Subsection 59(5)**

Omit “Department”, substitute “Office of Parliamentary Counsel (established by subsection 2(1) of the *Parliamentary Counsel Act 1970*)”.

### ***Federal Magistrates Act 1999***

#### **10 Subsection 81(4)**

Omit “Department”, substitute “Office of Parliamentary Counsel (established by subsection 2(1) of the *Parliamentary Counsel Act 1970*)”.

### ***Judiciary Act 1903***

#### **11 Subsection 86(3)**

Omit “Department”, substitute “Office of Parliamentary Counsel (established by subsection 2(1) of the *Parliamentary Counsel Act 1970*)”.

### ***Legislative Instruments Act 2003***

#### **12 Subsection 4(1)**

Insert:

***First Parliamentary Counsel*** means the person appointed to the position of First Parliamentary Counsel under subsection 4(1) of the *Parliamentary Counsel Act 1970*.

#### **13 Subsection 4(1)**

Insert:

***Office of Parliamentary Counsel*** means the Office established by subsection 2(1) of the *Parliamentary Counsel Act 1970*.

**14 Subsection 4(1)**

Insert:

*Second Parliamentary Counsel* means a person appointed to the position of Second Parliamentary Counsel under subsection 4(1) of the *Parliamentary Counsel Act 1970*.

**15 Subsection 4(1) (definition of *Secretary*)**

Repeal the definition.

**16 Subsection 16(1)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**17 Paragraph 16(2)(d)**

Omit “other Departments or agencies”, substitute “Departments or other agencies”.

**18 Paragraph 16(2)(e)**

Omit “other Departments or agencies”, substitute “Departments or other agencies”.

**19 Paragraph 16(2)(e)**

Omit “Department”, substitute “Office of Parliamentary Counsel”.

**20 Paragraph 16(2)(f)**

Omit “other Departments or agencies”, substitute “Departments or other agencies”.

**21 Subsection 16(3)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**22 Subsection 20(1)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**23 Subsection 20(1A)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**24 Subsection 23(1)**

Omit “Secretary” (wherever occurring), substitute “First Parliamentary Counsel”.

**25 Subsection 25(1)**

Omit “Department”, substitute “Office of Parliamentary Counsel”.

**26 Paragraph 25(2)(d)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**27 Subsection 27(1)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**28 Subsection 29(1)**

Omit “Department”, substitute “Office of Parliamentary Counsel”.

**29 Subsection 29(2)**

Omit “Department”, substitute “Office of Parliamentary Counsel”.

**30 Paragraph 29(3)(d)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**31 Subsection 30(1)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**32 Subsection 31(2)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**33 Subsection 31(3)**

Omit “Secretary” (wherever occurring), substitute “First Parliamentary Counsel”.

**34 Subsection 33(1)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**35 Subsection 33(2)**

Omit “Secretary” (wherever occurring), substitute “First Parliamentary Counsel”.

**36 Section 34 (heading)**

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Repeal the heading, substitute:

**34 First Parliamentary Counsel may require provision of compilations for registration purposes**

**37 Subsection 34(1)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**38 Subsection 34(2)**

Omit “Secretary”, substitute “First Parliamentary Counsel”.

**39 Subsection 34(3)**

Omit “Secretary” (wherever occurring), substitute “First Parliamentary Counsel”.

**40 Subsection 38(1)**

Omit “Department”, substitute “Office of Parliamentary Counsel”.

**41 Subsection 39(1)**

Omit “Department”, substitute “Office of Parliamentary Counsel”.

**42 Subsection 39(2)**

Omit “Department” (first occurring), substitute “Office of Parliamentary Counsel”.

**43 Subsection 39(2)**

Omit “Department” (second and third occurring), substitute “Office”.

**44 Subsection 52(3)**

Omit “Department”, substitute “Office of Parliamentary Counsel”.

**45 Section 58**

Repeal the section, substitute:

**58 Delegation**

The First Parliamentary Counsel may, by signed instrument, delegate to:

- (a) a Second Parliamentary Counsel; or

- (b) an SES employee in the Office of Parliamentary Counsel; or
  - (c) an SES employee in the Department;
- any of the powers or functions of the First Parliamentary Counsel under this Act.

## Part 2—Transitional and saving provisions

### 46 Definitions

- (1) In this Part:  
*Secretary* means the Secretary of the Department.
- (2) To avoid doubt, a reference in this Part to doing a thing includes a reference to making an instrument.

### 47 Things done under the *Acts Publication Act 1905*

- (1) If, before the commencement of this item, a thing was done by or in relation to the Secretary under a provision of the *Acts Publication Act 1905* then, for the purposes of the operation of any law of the Commonwealth on and after the commencement of this item, the thing is taken to have been done by or in relation to the First Parliamentary Counsel under that provision as in force after the commencement of this item.
- (2) Subitem (1) is not to be taken to change the time at which a thing was done by or in relation to the Secretary.

### 48 Things done under the *Legislative Instruments Act 2003*

- (1) If, before the commencement of this item, a thing was done by or in relation to the Secretary under a provision of the *Legislative Instruments Act 2003* (or of regulations made under that Act) then, for the purposes of the operation of any law of the Commonwealth on and after the commencement of this item, the thing is taken to have been done by or in relation to the First Parliamentary Counsel under that provision as in force after the commencement of this item.
- (2) If, before the commencement of this item, a thing was done by or in relation to the Department under a provision of the *Legislative Instruments Act 2003* (or of regulations made under that Act) then, for the purposes of the operation of any law of the Commonwealth on and after the commencement of this item, the thing is taken to have been done by or in relation to the Office of Parliamentary Counsel under that provision as in force after the commencement of this item.

- (3) Neither subitem (1) nor (2) is to be taken to change the time at which a thing was done by or in relation to the Secretary or the Department.
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*[Minister's second reading speech made in—  
House of Representatives on 10 May 2012  
Senate on 18 June 2012]*