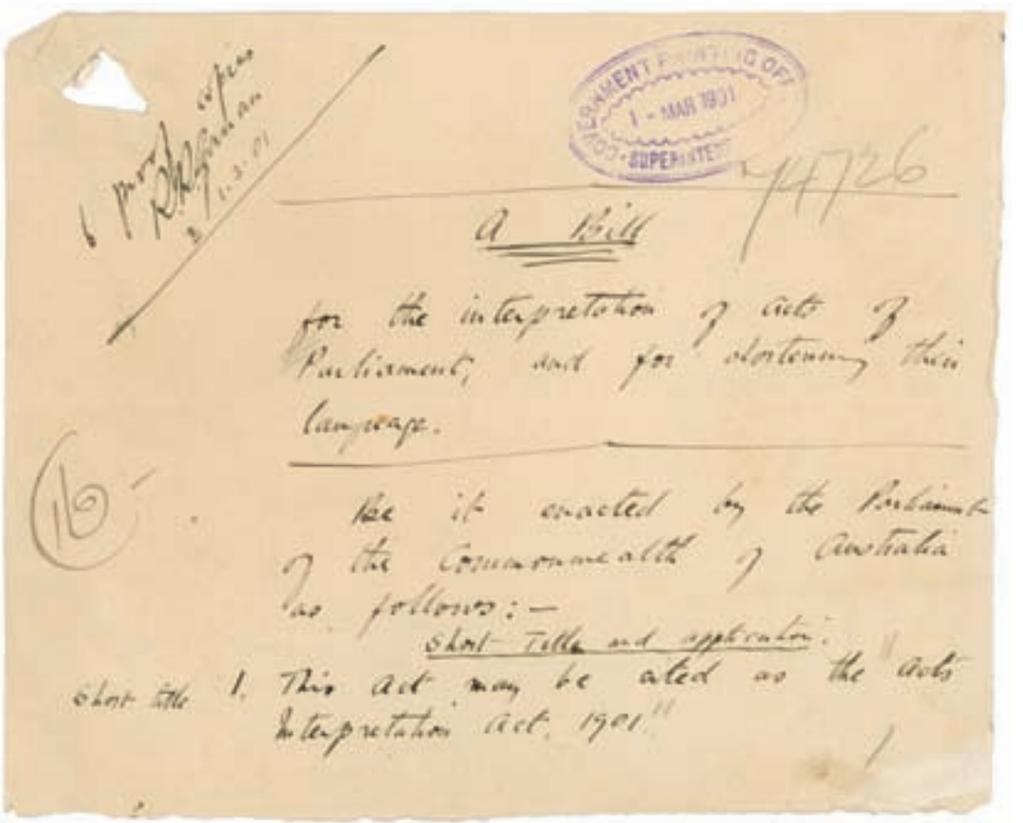
Australian Government
Office of Parliamentary Counsel

Fitting the Bill

A History of Commonwealth Parliamentary Drafting



Carmel Meiklejohn

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Extract from Robert Garran's handwritten draft of the Acts Interpretation Bill 1901.
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Contents

The Hon Nicola Roxon MP
Attorney-General

I am very pleased to contribute to this history of Commonwealth Parliamentary Drafting.

For a parliamentary democracy to function properly, the elected government must be able to implement its policies through legally effective laws. This demonstrates the central importance of drafters in the Office of Parliamentary Counsel who write those laws.

The work of drafting laws is difficult and exacting. It is a role to which many of the people mentioned in this history have devoted their careers.

This history conveys the significance of their work in the broader context of the history of Australia since Federation. It also highlights the involvement of many drafters in the early development of Canberra.

I would like to congratulate the Office of Parliamentary Counsel and Ms Meiklejohn on a comprehensive history which gives life to this vital, but often under-appreciated, component of Australia's political and legal system.

The Hon Nicola Roxon MP
Attorney-General

Peter Quiggin PSM
First Parliamentary Counsel

This history is more than a history of an organisation. It shows how drafting legislation links into the events and development of Australia and Canberra. In this way, it could be described as a history of Australia and its capital as viewed through the eyes of its legislative drafters.

The first seeds of this history were sown when Adrian van Wierst, a drafter in OPC, collected together a range of materials for a display for the centenary of the Australian Public Service. The success of the display was the catalyst for the preparation of this history. We were then fortunate to be able to engage Carmel Meiklejohn to research the history and write this book.

I would like to thank the many people who have given their time and provided information during the preparation of this history. In particular, many drafters and their families were interviewed by Carmel during the research for this book.

I hope that others enjoy reading this history as much as I have.

Peter Quiggin PSM
First Parliamentary Counsel

Preface

Arriving, almost by chance, in the Attorney-General's Department in 1990, I remained there for the second half of a previously peripatetic public service career. The next thirteen years engendered enormous respect for the agencies of the portfolio and their vital work in wide-ranging government legal areas. Enhanced knowledge of the Department's past, acquired during compilation of its centenary history in 2001 and by a subsequent contract to research and write the history of Commonwealth bankruptcy administration, only served to strengthen this admiration. Consequently, I was delighted to have the opportunity for closer study of parliamentary drafting – a unique and particularly specialised function within the Attorney-General's portfolio.

In my experience, preparation of an organisational history resembles nothing so much as putting together an historical jigsaw puzzle, many pieces of which are long-lost or forgotten. Researching the history of parliamentary drafting proved as challenging as ever in this regard. While I did have the advantage this time of starting with a pile of pieces already collected by history enthusiast and former drafter Adrian van Wierst, the composition of the final picture was still unclear. Much was revealed in the relentless search for additional facts, but many small pieces of the puzzle remained frustratingly hidden. Some will inevitably come to light after the history is published.

No picture concerning the history of laws and their application would be complete without glimpses of the social, employment and economic context at various periods. The development of Canberra is an integral part of this history too. Fundamental to the implementation of Commonwealth policies, the drafting function was always tied to the seat of government. With other colleagues in the Attorney-General's Department, the drafters were among the first public servants to move to the national capital in 1927. Many of them were notable for their wholehearted participation in the life of the embryonic city.

Organisational histories are also built on the contributions of people. Commonwealth drafters, and all the others who have supported the function since 1901, have devoted their energy, skills and talents to this important work. While it was not possible to mention every individual, their collective efforts have been recognised in this book. It is dedicated to every one of them.

Carmel Meiklejohn

Acknowledgements and Thanks

This history of Commonwealth parliamentary drafting was researched and written by Carmel Meiklejohn, under the direction of the Senior Management Team of the Office of Parliamentary Counsel (OPC).

Preliminary research on parliamentary drafting had been undertaken by First Assistant Parliamentary Counsel, Adrian van Wierst, prior to his retirement in 2005. Many of the OPC photographs were taken by him, and some older photographs were repaired by him to enable their reproduction for printing.

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The history was brought to life through the contributions of many people. Enthusiastic support and willing cooperation nurtured its creation. Those who acted as ongoing mentors, and who volunteered to help with editing, carried out these roles with notable generosity and patience. Grateful thanks to everyone who provided guidance, advice, information, memorabilia or simply encouragement in the course of the project.

OPC Senior Management Team:
Peter Quiggin, Marina Farnan, Iain McMillan, Susan McNeilly.

Former First Parliamentary Counsel:
Charles Comans, Geoff Kolts, Ian Turnbull, Justice Hilary Penfold.

Former drafters and corporate support staff of OPC:
Ivo Astolfi, Sue Bromley, Karen Brown (née Hodges), Cynthia Cheney, Janis Dogan, Glenyce Francis, Geoff Harders, Philippa Horner, Theresa Johnson, Kerry Jones, John Little, Dennis Pearce, Sandra Power, Dawn Ray, Tom Reid, Steve Reynolds, Vince Robinson, Julie Thompson (née Griffin), Marjorie Todd, Adrian van Wierst, Jeremy Wainwright, Paul Wan, Camilla Webster.

Family and friends of former drafters:
Philip Comans, Bruce Drysdale, Warren Ewens, Pauline Fanning, Vanessa Fanning, Margaret McCarthy, Margaret McCauliffe (née Garran), Ann Moyal, Peter Quayle, Pat Summers (née Boniwell) and daughters, Dawn Waterhouse (née Calthorpe).

Exchange drafters:
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A Useful and Honourable Profession

A Useful and Honourable Profession

At a conference held in 1995 to mark the 25th anniversary of the establishment of the Commonwealth Office of Parliamentary Counsel, First Parliamentary Counsel Hilary Penfold recounted a comment made to her 18 years before by renowned constitutional lawyer, Geoffrey Sawer. When Hilary told him that she was going to work in the Office of Parliamentary Counsel, she was pleasantly surprised to learn that he knew of the organisation. She was even more pleased when he said: 'So you're going to be a legislative drafter. [1] What a useful and honourable profession.'

An Ancient Art

Long used by governments to translate policies into practice, legislation existed in ancient civilisations. From around 2380 BC, laws to combat corruption and to provide greater freedom and equality for the citizens of Lagash in Mesopotamia were instigated by the city's ruler, Urukagina. Similar approaches to drafting were in evidence in the early legal codes of the region's cities and kingdoms. Many included epilogues and prologues, used to explain the purpose of the law, invoke divine authority and command compliance. Most were structured in an 'if … then …' format, with the description of a wrongdoing followed by its consequence or the punishment to be applied. Enacted in the name of a ruler, rather than any legislative body, legal codes reflected contemporary societal preoccupations, often making legal distinctions between social classes. Religion was integral to several codes, including the Hindu laws of Manu (in India, around 500 BC) which were attributed to Brahma. Inscriptions etched in stone pillars and boulders during the reign of the Indian emperor Ashoka two centuries later promoted Buddhist morality, proper behaviour and non-violence. Hebraic law as transcribed in the Bible had much in common with that of Mesopotamia many centuries before. Some codes contained economic laws which determined amounts of money attached to business deals, imposed fines and governed inheritance and the taxing and division of property. In Crete in the fifth century BC, the laws of the city of Gortyn afforded some protection to individuals prior to trial.

While laws such as those inscribed on tablets in the Sumerian city of Eshnunna around 1930 BC were composed in a format that made them easy to memorise, written legislation was becoming increasingly common. Legal text in cuneiform script was used

[1] Telling the story, Hilary Penfold added that Professor Sawer probably actually used the term 'draftsman'.

throughout the ancient Middle East – the earliest known example from the laws of Ur-Nammu around 2050 BC. Best preserved was the primitive 'constitution' of Babylonian ruler Hammurabi, its 282 statutes inscribed around 1790 BC on a stone pillar two-and-a-half metres high. Apart from some grammatical amendment, untidily structured Hittite legislation – covering a range of offences pertaining to aggression, sexual and marital relationships, service obligations, theft, property damage, financial and ritual matters – was copied closely throughout its use from around 1650 to 1100 BC. Oral laws and blood feuds in Athens, Greece, in the seventh century BC were replaced by a written constitution laid down by the legislator Draco. Posted on wooden tablets so that all literate citizens would be aware of them, and could appeal against injustices to the ruling council, these laws were harsh enough to give rise to the term 'draconian'.

Most influential on the evolution of legislation in Western civilisation was the system of Roman law developed over the millennium before the seventh century AD. Some laws were instigated by decree, but many were passed by governing assemblies or developed through magistrates' rulings or the interpretation of jurists, and occasional efforts were made to compile and simplify existing legislation. In 451 BC it was proposed that Roman laws should be put in writing, to prevent arbitrary application by magistrates. Magisterial authority was restricted while ten Roman citizens, given supreme political power for the duration of their task, were employed to record the empire's legislation. This exercise eventually yielded the legal text contained in the Law of the Twelve Tables, approved by the people's assembly in 449 BC.

Governments evolved and laws became more formal, emphasising the importance of written records. Drafting of Roman statutes was the province of scribes who developed their own intricate style for this work. Clerks' 'engrossing' onto parchment of later English legislation was similarly unintelligible to the uninitiated. The first Act recorded on the English statute book was the updated Magna Carta in 1225 AD, during the reign of Henry III, although official records of English legislation were not kept until 1278. Before 1490 each session of the English Parliament produced only one Act, which incorporated all the measures passed in the session. From then, facilitated by the advent of the printing press in 1476, printed copies of each separate item of legislation were circulated – this practice was not actually validated by the Parliament until 1801.[2]

English legislation was traditionally drafted by barristers, judges or Members of Parliament themselves. Dawning acceptance of government responsibility for parliamentary legislation saw England's first dedicated parliamentary draftsman

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[2] A Garran, 'The Significance of the Form of Acts of Parliament', *The Australian Law Journal*, vol. 29, 22 March 1956, pp. 630-634. The Magna Carta was originally issued in 1215.

appointed by Prime Minister William Pitt late in the eighteenth century. The 'Parliamentary Counsel to the Treasury' produced government Bills for the Treasury, and some for other departments, until around 1837. A similar position with broader responsibilities, preparing Bills for Parliament under the direction of the Home Secretary, was then put in place. Faced with a growing legislative workload in an era of increasing bureaucracy, various departments, at considerable cost, continued to employ independent barristers to draft Bills, or to assign the work to departmental officers in addition to their usual duties.[3] It was the third Counsel appointed to the Home Office in 1860, Henry (later Baron) Thring, who suggested that it would be less costly and more effective to pursue consistency in drafting style and to subject Acts and subordinate legislation to 'a certain degree of uniformity'. The son of a clergyman, Thring was born in Somerset in 1818. Practising as a barrister in conveyancing (a field he described as 'dry' and 'repulsive') he had applied his long-held interest in 'the exact meaning of words' to drafting statute law before taking on the parliamentary role.[4]

Persuaded that the Government needed a specialised drafting office – and aiming to 'train up young men in this very peculiar branch of business' – the Chancellor of the Exchequer, Robert Lowe, founded the Office of the Parliamentary Counsel to the Treasury on 8 February 1869 and appointed Henry Thring as its full-time head.[5] Charged with drafting and settling all government Bills (other than Scottish and Irish ones) referred to it by the Treasury, the Office was launched during an intensive period of legislative activity. By the time he retired in 1886, Thring had established the blueprint for modern parliamentary drafting. Acting on departmental instructions, parliamentary counsel drafted uniform, logical Bills, divided into sequential parts and clauses. Thring's thorough knowledge of parliamentary processes, the statute book and common law earned him enormous authority and respect, setting a benchmark for parliamentary drafters with similarly exceptional legal knowledge, intellectual ability and command of language. Few would seek to emulate Thring's sometimes stubborn and abrasive criticism of policy underlying drafting instructions, which on one occasion attracted an additional ministerial instruction: 'Thring is getting bumptious. ... Just tell him to go to and square the circle.'[6]

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[3] C Ilbert, *Legislative Methods and Forms,* The Lawbook Exchange Ltd, Clark, New Jersey 2008, pp. 80-83.
[4] A Samuels, 'Henry Thring: the First Modern Drafter', *Statute Law Review* vol. 24, no.1, 2003, pp. 91-92.
[5] ibid.
[6] Editorial, 'Henry Thring – A Hundred Years On', *Statute Law Review,* vol. 28, no. 1, 2007, p. iv.

1940s Drafting – A Satirical View

This rhyme, 'The Parliamentary Draftsman', was included in a book entitled *Poetic Justice* which was published in London in 1947. The author, simply described as 'J.P.C', was probably Irish-born barrister (subsequently High Court Judge) James Peter Comyn. Later knighted, Sir James wrote several books, and was renowned for his light verse:

I'm the Parliamentary Draftsman,
I compose the country's laws,
And of half the litigation
I'm undoubtedly the cause.
I employ a kind of English
Which is hard to understand:
Though the purists do not like it,
All the lawyers think it's grand.

I'm the Parliamentary Draftsman,
And my sentences are long:
They are full of inconsistencies,
Grammatically wrong.
I put Parliamentary wishes
Into language of my own,
And though no one understands them
They're expected to be known.

I compose in a tradition
Which was founded in the past,
And I'm frankly rather puzzled
As to how it came to last.
But the Civil Service use it,
And they like it at the Bar,
For it helps to show the laity
What clever chaps they are.

I'm the Parliamentary Draftsman
And my meanings are not clear,
And though words are merely language
I have made them my career.
I admit my kind of English
Is inclined to be involved –
But I think it's even more so
When judicially solved.

I'm the Parliamentary Draftsman,
And they tell me it's a fact
That I often make a muddle
Of a simple little Act.
I'm a target for the critics,
And they take me in their stride –
Oh, how nice to be a critic
Of a job you've never tried!

[J.P.C *Poetic Justice* pp.31-32.]

Colonial Australia

Inheriting the English legal system, Australia's colonies struggled to find the best means for drafting effective legislation. Colonial law officers, the best available but generally lacking the necessary professional ability and experience or preoccupied with other work, were frequently unequal to the drafting tasks they were assigned. Judges, public lawyers and politicians (who were not necessarily legal practitioners) were involved in the preparation of Bills. Various drafts of legislation were exchanged between colonies on a personal rather than official basis by many politicians and lawyers during the nineteenth century. In several colonies, Attorneys-General and various government

officials did most of the drafting, but all used private practitioners to varying degrees. Drafting work was distributed to just one or two lawyers by some colonial governments, while others contracted a wider group. Problems relating to expense and reliability, questions of patronage and grossly unsatisfactory standards of draft legislation created controversy in colonial parliaments. Drafting costs were prohibitively high for many Members faced with preparing Bills at private expense. Members wishing to introduce legislation increasingly looked to their governments to provide assistance with funds or drafting resources.

Following the formation of the New South Wales Legislative Council in 1824, the Attorney-General (at that time an official appointed by the Governor) drafted most legislation, assisted by the Solicitor-General and Colonial Secretary. Full self-government in 1856 changed the Attorney-General's status to that of a Minister, responsible to the Parliament. Two barristers given the title 'Parliamentary Draftsman' were expected to spend part of their time on drafting duties, in particular adapting English legislative reforms for use in the colony. Increasing work and the need for a more effective and better coordinated approach to parliamentary drafting impelled the appointment of a permanent full-time official two decades later – a move possibly also influenced by the English example of 1869. Alexander Oliver, a former part-time drafter, was appointed as the first permanent salaried Parliamentary Draftsman in Australia from 1 June 1878 and served in the role until 1894. The sought-after position attracted other strong contenders, including future Prime Minister Edmund Barton, who had been admitted as a barrister in 1871. Initially responsible to the Attorney-General the role involved drafting Bills under instructions from Ministers, preparing by-laws, rules and regulations, monitoring the passage of legislation, and reporting on relevant changes in Imperial law. Consolidation of statutes was done by other staff. Considerable amounts of drafting were still contracted out to private practitioners, and judges were consulted about proposed legislation.

On its separation from New South Wales in 1859, Queensland established a comparable part-time Parliamentary Draftsman position. When John Bramston, who held the appointment in the 1860s in conjunction with various other roles, relinquished this office the position was left vacant until 1899. Considering the situation in 1889, the Queensland Government decided that the prevailing system of the Attorney-General drafting some Bills, with other work assigned to private lawyers selected for their specific expertise, was likely to produce the best standard of legislation. Queensland's first two Attorneys-General, Ratcliffe Pring and Charles Lilley were both keen legislators – some personal rivalry between them adding impetus to their drafting. Most influential

on early drafting in Queensland was Sir Samuel Griffith.[7] In Parliament from 1872 (in opposition, as Attorney-General, in other ministries and as Premier) and as the Chief Justice of the Supreme Court after 1893, he was an exceptional and prolific drafter. A former private secretary to Griffith, John Woolcock, was appointed as part-time Parliamentary Draftsman in 1899. Retaining the right of private practice, he held the office until 1927.

Longstanding concerns about low standards and high costs of legislation being drafted by barristers led to the establishment of the Office of Chief Parliamentary Counsel in Victoria in July 1879. Appointed as the colony's first Parliamentary Draftsman, Edward Carlile served two terms, from 1879 until 1882 and again from 1889 until his retirement in 1910. Although South Australia had persistent problems with legislation which did not pass parliamentary scrutiny, and there were suggestions that appointing a permanent draftsman would bring benefits in cost and uniformity, with the possible exception of a very brief period around 1885 no official appointment was made there. The Attorney-General prepared some Bills, private members produced others at no cost to the government, and the remaining drafting work was contracted out to numerous private practitioners at great expense. With less external supplementation, Tasmania's Attorney-General was responsible for drafting legislation until the end of the nineteenth century. A legislation committee of the local law society provided some assistance in the 1890s. Walter Wise, who was apparently doing drafting work within the Attorney-General's Department for some time previously, was officially appointed as Parliamentary Draftsman in Tasmania in 1899. [8] Always hard-pressed for resources, the Western Australian government made no such appointment in this period. The Attorney-General did the bulk of the drafting and the Premier, John Forrest, borrowed what he could from legislators such as Sir Samuel Griffith in other colonies.[9]

Divergence in approaches to parliamentary drafting was just one indicator of the separateness of the Australian colonies before Federation in 1901. Until then Australia was effectively a geographical expression. Complacent under the general protection of the 'mother country', six independent colonies made their own laws and looked after their affairs with provincial disregard to the needs of the others. Infrequent inter-colonial travel was further hampered by the lack of a uniform railway gauge. Border duties restricted trade, protectionism was rife and rivalry between the larger colonies in particular was palpable. Burgeoning national sentiment – stirred by growing

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[7] Samuel Griffith was made Knight Commander of the Order of St Michael and St George (KCMG) in 1886, and advanced to Knight Grand Cross of the Order of St Michael and St George (GCMG) in 1895.
[8] Walter Ormsby Wise was appointed Secretary of the Law Department, Tasmania from 1 January 1899. Government Notice No. 29, *Hobart Gazette*, vol. CII, no. 6502, 10 January 1899, p. 41.
[9] J Finn, 'Legislative Drafting in Nineteenth Century Australia and the First Permanent Parliamentary Draftsmen', *Statute Law Review,* vol. 17, no. 3, 1996, pp. 90-114.

awareness that separate colonies were vulnerable, in terms of both their economies and defence – intensified moves towards unity. At meetings and conventions throughout the 1890s, delegates from the colonies debated the framework for federating and drafted Australia's Constitution.

Constitution and Federation

Eminent lawyers from various colonies contributed to the drafting of the Constitution. The initial draft was the work of Tasmanian Attorney-General Andrew Inglis Clark, with some technical assistance from Walter Wise. Intended to be a private working document, the draft was first circulated early in 1891. Revised by a drafting committee which included Sir Samuel Griffith, Edmund Barton, Andrew Inglis Clark and South Australia's Charles Kingston, aboard the Queensland Government yacht *Lucinda* during the Easter break, the Bill was endorsed by the National Australasian Convention held in Sydney from 2 March to 9 April 1891. Renowned Australian historian John La Nauze's subsequent declaration that 'The draft of 1891 is the Constitution of 1900, not its father or grandfather'[10] reflected the fact that 86 sections of a total of 128 of the final Constitution were recognisable in the first draft. This incorporated the description 'Commonwealth of Australia'; government divided into legislative, executive and judicial branches; the legislative structure of a House of Representatives and a Senate; and the separation and division of federal and state powers.

Emphasising the significance of the drafting done at the Sydney convention, Robert Garran, then a young barrister with a budding interest in the federal movement, later reflected:

> *The whole process of drafting was completed in 12 days, in the course of which Federation came down from the skies to the earth and the most vague aspiration was crystallised into a precise plan setting out the terms of a federal compact.*[11]

Aspects of the Australian Constitution Bill of 1891 were amended at later conferences, especially at the three sessions of the Australasian Federal Convention held during 1897 and 1898. Ten delegates representing each colony – except Queensland which could not agree on a formula for electing its representatives – debated every clause. With no federal parliament, Australia's first national legislation was negotiated by leading statesmen of various political persuasions, the issues most hotly contested reflecting contemporary colonial preoccupations. The drafting committee formed to finalise the

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[10] J La Nauze, *The Making of the Australian Constitution*, Carlton: Melbourne University Press, 1972, p.78.
[11] Robert Garran, speaking on 'Armchair Chat', ABC radio, rebroadcast on Radio National 'Verbatim', 2001.

Constitution Bill in 1897 comprised Edmund Barton and two of his good friends, fellow New South Wales delegate Richard O'Connor and South Australian Sir John Downer, with Robert Garran as its secretary. To enable consensus, some further changes were made at a premiers' conference early in 1899, and the Bill was ultimately supported by a majority in all colonies in referenda held in 1898 and 1899, and on 31 July 1900 in Western Australia. Endorsed by the Australian people, the Bill still needed the approval of the British Parliament.

The Constitution Bill

At the 1898 Federal Convention in Melbourne, South Australian representative Charles Cameron Kingston, putting the motion to take the Commonwealth of Australia Constitution Bill to the electors, declared:

> *I welcome it as the most magnificent constitution into which the chosen representatives of a free and enlightened people have ever breathed the life of popular sentiment and national hope. ... I pledge myself to recommend the adoption of this Constitution, daring any danger and delighting in any sacrifice which may be necessitated by unswerving devotion to the interests of the Commonwealth of Australia.*[12]

[Australasian Federal Convention, Melbourne, 17 March 1898.]

Delegates from all the Australian colonies arrived in London in March 1900 to negotiate the enactment of the Bill. Edmund Barton represented New South Wales, Alfred Deakin Victoria, Charles Kingston South Australia, James Dickson Queensland and Sir Philip Fysh Tasmania. Stephen Parker from Western Australia attended in the capacity of observer. Advocating passage of the Bill through the Parliament without amendment, the delegation negotiated long and hard with Britain's Colonial Secretary, Joseph Chamberlain, particularly over the clause pertaining to the court of appeal. When a compromise was eventually reached, Barton, Deakin and Kingston celebrated in private by joining hands and dancing in a circle around the room. Passed on 5 July 1900, the Commonwealth of Australia Constitution Act was assented to by Queen Victoria four days later. With the signing of the proclamation delayed until 17 September, pending the outcome of the final referendum in Western Australia, the date fixed for the establishment of the Commonwealth was 1 January 1901.

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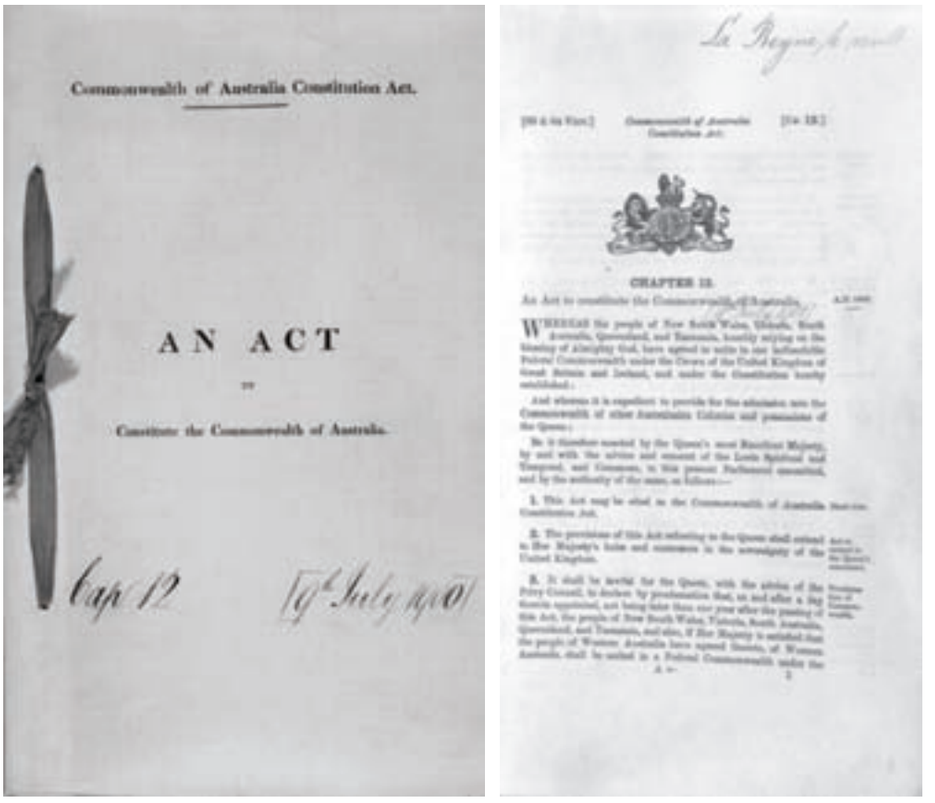
[12] J Quick, 2000, *Historical Introduction to the Annotated Constitution of the Australian Commonwealth,* University of Sydney Library on-line resources, http://setis.library.usyd.edu.au/ozlit, accessed 14 April 2010.



Commonwealth of Australia Constitution Act 1900 (UK).
[Digital copy courtesy of the National Archives of Australia]

Selectively borrowing from British tradition, Australian drafters devised a unique and original Constitution appropriate to a new nation singularly formed through peaceful democratic and legal processes. Aspiring to greater independence from England, the drafters considered their own experiences in colonial legislatures and precedents in other countries including Great Britain, Canada, Switzerland, Germany, South Africa and the United States of America. Although some delegates favoured a republican government for the new federation, the vast majority preferred a more familiar system in which monarchy remained an integral part. Elements of the American doctrine of separation of powers were incorporated, as were some aspects of Canadian federalism. Legislative powers assigned to the Commonwealth included trade, commerce, defence and immigration – readily agreed as logical responsibilities of a central government. Some federal powers were exclusive, others defined as concurrent with those of the States. Delegates at the conventions rejected the Canadian model of residual powers resting with the federal government, rather than the provinces, as being too centralised

for the Australian situation and a higher level of influence for the Australian States was preserved. Compromise prevailed, as it would need to in the drafting of much subsequent Commonwealth legislation as a result of this decision. Issues relating to the balance between federal and state powers, and the representation of the more populous and the smaller States, dominated a great deal of the debate. Decisions on some issues were incorporated in the Constitution, others were made provisionally and left for the new Parliament to settle.

Reflections on Federation

Asked during a radio interview in the early 1950s: 'Has Federation turned out as you expected?', Sir Robert Garran replied:

> *Well yes and no. By and large the sort of thing we expected has happened but with differences. We knew the Constitution was not perfect; it had to be a compromise with all the faults of a compromise. We expected difficulties in finding out in places just what it meant for the High Court was created to solve them. The difficulties came but in unforeseen shapes. The founders were not prophets, they couldn't foresee the patterns of the future. For instance, how much with the increasing complexity of our economy and the widening functions of government, the Commonwealth and States would spread and overlap. To the founders commerce, production and industry were quite separate and distinct, but they're now so interlaced that it's hard to sort them out. Again, they had no conception of total war nor of a world twice ravaged and again threatened by a world war. Huge expenditure on defence and on social services has raised new financial problems. But, in spite of the unforeseen strains and stresses, the Constitution has worked, on the whole, much as we thought it would. I think it now needs revision, to meet the needs of a changed world. But no-one could wish the work undone, who tries to imagine, what, in these stormy days, would have been the plight of six disunited Australian colonies.*

[Memoir of Australian Federation, recorded for the ABC radio program 'Armchair Chat', rebroadcast on Radio National 'Verbatim' in 2001.]

One of the most democratic in the world at the time, the resultant Australian constitutional framework provided for two popularly elected Houses of Parliament. Members of the House of Representatives, proportionate to the populations of each State, were to be directly chosen by voters. Each State would also elect an equal number of Senators, initially six. The assent of both houses was needed to pass Bills (described as 'proposed laws' in the Constitution), which were to be prepared in the exact form of the intended Act. Introduced into either House, amended by either or both, and finally agreed in identical form in both, draft legislation required the assent of the Governor-General (or in some cases the monarch) to become an Act of Parliament.

Aside from some restrictions on the Senate's ability to initiate or amend aspects of financial legislation, the Constitution gave the two Houses equal legislative powers. If not resolved through debate, negotiation or compromise, conflict over legislation might be subject to section 57 of the Constitution, providing for a double dissolution and elections for both Houses. Disagreement persisting after this process might be settled by a joint sitting of members of both Houses. Constitutional amendment was to be the province of the Australian people, not the Parliament as such, and could only be achieved through a national referendum.

Commonwealth Drafting

Specific provision for the election of the first Parliament was made under the Constitution. Parliament was to be summoned to meet no later than six months after the establishment of the Commonwealth. Arrangements for drafting the necessary legislation were put in place at the very beginning. A dedicated agency – like the English office which by then boasted two drafters and five support staff – was not deemed necessary. The drafting function was assigned to the Attorney-General's Department. Its Secretary Robert Garran, the sole member of the Department for some months, was appointed as the Commonwealth's first Parliamentary Draftsman. Drafting for him and others who joined the Department from June 1901 was a part-time role, carried out in conjunction with everything else needed to set up the legal structure for the new government. Nonetheless the necessary enabling Bills were drafted in quick succession. The talent and influence of individual drafters, in the Department and in the Parliament, once again had a significant impact on what was able to be achieved. Garran sought out competent officers to staff the Department, several among them notable for their superb drafting skills. State drafting offices continued to serve state governments, building their own traditions and histories, while the Commonwealth learned from the experiences of others but took the advantages of a fresh start to develop its own distinctive drafting style.

Demands on the Commonwealth's drafting resources intensified as the legislative workload grew. The First and Second World Wars and the Great Depression necessitated greater federal regulation; government responsibilities expanded; social attitudes evolved; technology developed and economies became ever more complex. Drafters needed the skills to translate wide-ranging and increasingly complicated government policy into effective law. Expected to ensure that draft legislation complied with both contemporary parliamentary procedure and an expanding body of law, they had to be conscious of the gamut of political, economic, cultural and social factors impacting upon it. No longer viable as a part-time role, parliamentary drafting required the specialist services of dedicated professionals able to focus on this as a primary task. A discrete position of Parliamentary Draftsman was established from May 1946, and the

Parliamentary Drafting Division was created in a post-war review of the Attorney-General's Department. Separated from the Department to answer directly to the Attorney-General, the Office of Parliamentary Counsel (OPC) was established by the *Parliamentary Counsel Act 1970*. In March 1973 responsibility for drafting subordinate legislation was transferred to the newly created Legislative Drafting Division in the Attorney-General's Department, leaving OPC to focus on Bills work.

Parenting the Law

Jim Monro, who worked as a drafter from 1954 to 1981, explained the drafting process in metaphorical terms:

> *A new law is rather like a new-born baby. It has been in the making for a considerable period and must now face the world. It will be praised and reviled; it will be tested in the rough and tumble of the world and have its character relentlessly probed in an attempt to find its weaknesses; it may die an untimely death, be subjected to major surgery or live to a ripe and honourable old age. A baby whose conception is the result of loving thought and planning, whose period of gestation has been adequate and competently supervised and who has been delivered by a skilled obstetrician, starts with advantages not shared by children who have not been so fortunate. In the same way the young law that has been carefully thought out in the planning stage, has not been rushed through the drafting process and has been carefully considered and dealt with in its passage through the Parliament is more likely to stand the test than one that has been rushed through any of those processes.*
>
> *The draftsman may be likened to the mother of a law, but should not be expected to be both father and mother of a law. He takes the genes presented by the father, adds his own contribution towards the character of the law, nurtures it through its period of gestation and hands it over to the Parliament, as the skilled obstetrician, to see it through the pangs of birth.*
>
> *...*
>
> *A bill can be the result of careful preparation and planning with a full period for drafting. On the other hand, like a baby, its conception can be the result almost of impulse, and its period of gestation reduced to a minimum, so that it emerges pale and weak to face the dangers of premature birth. Even when the choice is not solely in the hands of the department sponsoring the bill, that department can exercise a strong influence in the direction of properly planned parenthood.*

[Assistant Parliamentary Draftsman Jim Monro. Address delivered to the ACT Group Seminar on the Process of Legislation, 24 July 1963.]

Whatever its organisational form, the nature of legislative drafting meant that the function was always closely associated with the Attorney-General and the Parliament. After the Commonwealth government moved its headquarters to Canberra in 1927 this did not necessarily imply physical proximity. With suitable office accommodation scarce, ministerial offices were provided in the provisional Parliament House rather than being located with their departments, as was the practice in other countries. Some departments remained in Melbourne for many years afterwards. The Australian arrangement was institutionalised when the new Parliament House, incorporating a ministerial zone with its own entrance, opened in 1988.

From the beginning, Commonwealth parliamentary drafters grappled with the traditional challenges of communicating through legislation. Their primary objective was always to give effect to the intentions of policymakers, using language that was unambiguous, yet as intelligible as possible to a wide-ranging audience. Members of Parliament, the judiciary, legal professionals, public service administrators and the general public were equally likely to criticise ambiguity or complexity in an Act. With no facility within legislation to explain their reasoning or intentions, drafters attempted to consider implications of proposed laws from every conceivable angle. They needed to be cognisant not only of judicial precedent and the High Court's stance on constitutional issues but of the likelihood of unsympathetic interpretation of statutes. Knowing that their work would be scrutinised at all levels, often by those looking for loopholes or seeking to establish opposing interpretations, drafters sought to eliminate or reduce every possibility for misunderstanding. At the same time they strove to keep abreast of technical advances in drafting, and other developments such as the use of Plain English.

Precision Drafting

Nineteenth-century English High Court Judge Sir James Stephen commented on the challenges of drafting for understanding:

> *... it is not enough to attain to a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it.*
>
> [*re Castioni* [1891] 1 QB 149 United Kingdom.]

Juggling the expectations of all user groups, legislative drafters also needed to be impartial in giving effect to policy derived from various sources – whether it be engendered by public expectation, political platform, ministerial commitment, judicial

ruling, administrative review or legal or social reform. Not in a position to refuse to act for a client (resignation aside) Commonwealth drafters produced laws reflecting constantly changing political priorities, providing vital support to governments from both sides of politics. Sensitive matters such as the franchise, immigration, human rights and indigenous affairs; complex subjects including taxation and bankruptcy; and issues of public concern like industrial relations and national security all received due attention. The ability to design systems to implement policy across such wide-ranging areas was critical. Rarely initiators of policy themselves, drafters needed to grasp precise details of proposals and to critically examine and analyse the implications of every aspect. Without interfering with substantive policy they were expected to help policymakers clarify their thinking, and to shape their intentions into a practical legislative form. Whether legislation was required in times of crisis, or to implement significant reforms, drafters were constantly subject to time limitations.

This crucial role demanded specialist skills, not just technical ability but the requisite professional ethos. While the basic criteria – high level academic qualifications, excellent language skills, imaginative yet systematic thinking, meticulous attention to detail, and a degree of diplomacy – were not exclusive to drafting, such onerous and exacting legal work did not appeal to everyone. Often thankless, with the drafter sometimes bearing the brunt of uninformed disapproval or misdirected condemnation of the policy behind a Bill, the work also demanded gracious acceptance of criticism. Pragmatism and a sense of humour were needed to cope with frustrating situations beyond the drafter's control. Policy changes, the vagaries of the legislation program, prolonged debate and the proroguing or dissolution of Parliament all impacted on the passage of Bills. As the need for professional and experienced drafters grew with the expanding size and complexity of the Commonwealth statute book, greater attention was paid to the recruitment, training and retention of those dedicated to a career in this 'peculiar art'.[13] Some experts avowed that drafters were born, not made, others focused on nurturing drafting skills over time through trial, error and patient training. All recognised the enduring importance of administrative, stenographic, editorial and technological assistance in producing good drafts. From its establishment in 1970, the universal management challenges faced by OPC were overlaid with the need to provide effective support for parliamentary drafting, a service essential to both government and the governed.

[13] HS Kent, *In On The Act – Memoirs of a Lawmaker,* McMillan London Limited, 1979, p.98.

Enacting Words

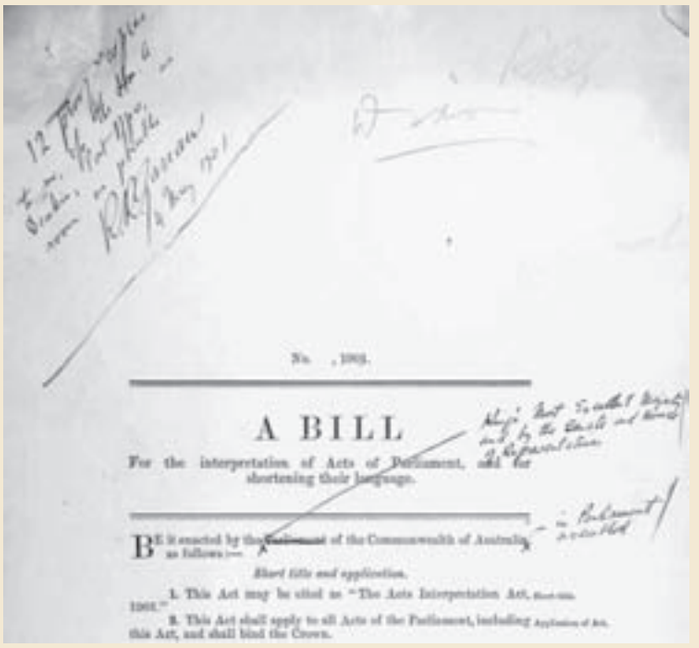
Drafters of the Australian Constitution studied the enacting formula used in the United Kingdom from the fifteenth century: 'Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:'.

As explained by John Quick and Robert Garran: 'In the Constitution of the Commonwealth the old fiction that the occupant of the throne was the principal legislator … has been disregarded; and the ancient enacting words will hereafter be replaced by words more in harmony with the practice and reality of constitutional government. The Queen, instead of being represented as the principal, or sole legislator, is now plainly stated [by section 1 of the Constitution] to be one of the co-ordinate constituents of the Parliament.'
[J Quick and R Garran *The Annotated Constitution of the Australian Commonwealth* p.386]

The Australian words of enactment – a short paragraph preceding the clauses of a Bill – changed several times from Robert Garran's relatively simple first draft in 1901, even before the Acts Interpretation Bill was introduced.

1901 (Garran's early draft)

Be it enacted by the Parliament of the Commonwealth of Australia as follows:



No. , 1901.

A BILL

For the interpretation of Acts of Parliament, and for shortening their language.

BE it enacted by the Parliament of the Commonwealth of Australia, as follows:—

Short title and application.

1. This Act may be cited as "The Acts Interpretation Act, 1901."

2. This Act shall apply to all Acts of the Parliament, including this Act, and shall bind the Crown.

1901–1973

Be it enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia as follows:
[From 1952, this version referred to the Queen.]

1973–1976

Be it enacted by the Queen, the Senate and the House of Representatives of Australia, as follows:

1976–1990

Be it enacted by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:
[In this version, the word 'the' was inserted before 'House of Representatives' in 1980.]

1990–

The Parliament of Australia enacts:

Commonwealth Parliamentary Drafting 1901-2011 Timeline

Commonwealth Parliamentary Drafting 1901-2011

1901	Drafting was made a function of the Attorney-General's Department when the Commonwealth of Australia came into being on 1 January 1901.
1901	Robert Garran appointed Secretary to the Attorney-General's Department and Parliamentary Draftsman. [Later also appointed Solicitor-General under the *Solicitor-General Act 1916*.]
1901	Department first located on the corner of Spring and Collins Street, Melbourne. Later moved to Commonwealth Offices at 4 Treasury Place.
1927	Attorney-General's Department moved to Canberra with Commonwealth Parliament. Inaugural sitting in Provisional Parliament House 9 May 1927.
1927	Department located in Second Secretariat Building on Commonwealth Avenue – later known as Commonwealth Offices (West Block).
1932	Sir Robert Garran retired. George Knowles appointed Solicitor-General, Secretary to the Attorney-General's Department and Parliamentary Draftsman on 10 February.
1937	Government undertaking given that the Attorney-General's Department would examine all subordinate legislation before promulgation.
1946	Sir George Knowles appointed High Commissioner to South Africa. Professor Kenneth Bailey succeeded him as Solicitor-General and Secretary to the Attorney-General's Department. Martin Boniwell appointed to act in the newly separate role of Parliamentary Draftsman from 9 May 1946.
1948	Major reorganisation of the Department. Parliamentary Drafting Division created. Martin Boniwell appointed Parliamentary Draftsman on 8 July 1948.
1949	Martin Boniwell retired. John Ewens appointed Parliamentary Draftsman on 9 June. Charles Comans appointed Principal Assistant Parliamentary Draftsman.

1956	Attorney-General's Department moved to A-Block of the Administrative Building, King Edward Terrace, Parkes.
1962	Restructure and reorganisation of legal areas of the Attorney-General's Department. Decision made that drafting of subordinate legislation should remain the responsibility of the Parliamentary Drafting Division.
1968	Drafting issues scrutinised by Joint Committee of Public Accounts. Recommended that the Attorney-General's Department should continue as the sole drafting authority for 'subsidiary legislation'.
1970	Parliamentary Counsel Bill introduced on 12 March 1970.
1970	Joint organisational review of Parliamentary Drafting Division undertaken by Public Service Board and Attorney-General's Department reported in June 1970.
1970	*Parliamentary Counsel Act 1970* received Royal Assent on 15 May and commenced on 12 June 1970. Office of Parliamentary Counsel (OPC) established as a separate statutory agency. John Ewens appointed First Parliamentary Counsel on 29 June, and Charles Comans and Bronte Quayle appointed Second Parliamentary Counsel.
1972	John Ewens retired. Charles Comans appointed First Parliamentary Counsel on 18 November 1972 . Geoff Kolts succeeded him as Second Parliamentary Counsel.
1973	Drafting of regulations and ordinance transferred from OPC to new Legislative Drafting Division in the Attorney-General's Department from 5 March 1973. Management of drafting section in Darwin also transferred.
1973	Introduction of 'pairs' system for drafters.
1977	Charles Comans retired. Bronte Quayle appointed First Parliamentary Counsel on 5 February 1977. Jim Monro succeeded him as Second Parliamentary Counsel.
1981	Bronte Quayle and Jim Monro both retired in January. Geoff Kolts appointed First Parliamentary Counsel from 31 January 1981. Ron King and Ian Turnbull appointed Second Parliamentary Counsel.

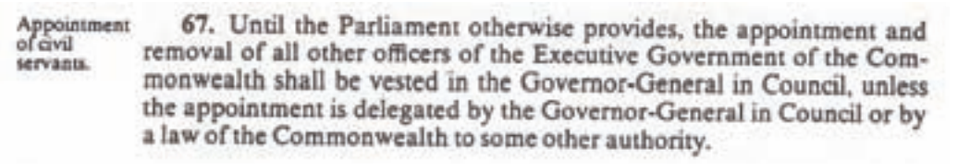
1982	Ron King retired in January. Geoff Harders appointed Second Parliamentary Counsel.
1983	OPC moved to North Building of new Robert Garran Offices in May – Office situated on the corner of Kings Avenue and Macquarie Street, Barton.
1983	Responsibility for subordinate legislation officially removed from OPC's functions, nine years after transfer to the Attorney-General's Department. Parliamentary Counsel Act amended by the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*.
1986	Geoff Kolts became Commonwealth Ombudsman. Ian Turnbull appointed First Parliamentary Counsel from 1 July 1986. Hilary Penfold appointed Second Parliamentary Counsel.
1986	Review of drafting style. Ongoing program to develop plain language drafting and improve readability of Bills.
1987	Geoff Harders resigned. Eric Wright appointed Second Parliamentary Counsel.
1992	OPC moved to MTA House, 39 Brisbane Avenue, Barton in September – its first premises separate from the Attorney-General's Department.
1992	Australasian meeting of drafters held in Canberra in July – organised by the Parliamentary Counsel's Committee, and hosted by OPC.
1993	Ian Turnbull retired. Hilary Penfold appointed First Parliamentary Counsel on 7 July. Tom Reid subsequently appointed Second Parliamentary Counsel in February 1994.
1993	House of Representatives Standing Committee on Legal and Constitutional Affairs (Lavarch Committee) report on legislative and legal drafting, September 1993.
1995	In August, OPC hosted a conference to celebrate the 25th anniversary of the establishment of the Office.
1996	Eric Wright retired. Kerry Jones appointed Second Parliamentary Counsel.

1996	New format for Bills introduced significant improvements in layout and style.
2001	Participating in celebrations commemorating the centenary of the Australian Public Service, OPC assembled a display of historic memorabilia and photographs.
2001	Tom Reid left OPC. Peter Quiggin succeeded him as Second Parliamentary Counsel.
2004	Hilary Penfold appointed Secretary of the Department of Parliamentary Services. Peter Quiggin appointed First Parliamentary Counsel on 14 May 2004. Vince Robinson appointed Second Parliamentary Counsel.
2005	Kerry Jones retired. Marina Farnan appointed Second Parliamentary Counsel.
2009	Vince Robinson retired. Iain McMillan appointed Second Parliamentary Counsel.
2010	OPC celebrated the 40th anniversary of the establishment of the Office on 12 June.
2011	110 years of Commonwealth parliamentary drafting attained on 1 January 2011.

A New Statute Book

A New Statute Book

One of the primary functions of the newly created Attorney-General's Department, Commonwealth parliamentary drafting officially began at Federation on 1 January 1901. On that date seven Commonwealth departments were created. Staff from the previous colonial customs and excise agencies were automatically transferred to the Department of Trade and Customs. State defence and Postmaster-General's functions and staff were taken over by proclamation on 1 March 1901. Four departments – External Affairs, Home Affairs, the Treasury and the Attorney-General's Department – were established from scratch. Until the commencement of the *Commonwealth Public Service Act 1902* all appointments to the public service were made under section 67 of the Australian Constitution.



Appointment of civil servants.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.

Public Service Appointments, as provided for under section 67 of the Commonwealth of Australia Constitution Act.

Robert Garran was appointed as the first Secretary to the Attorney-General's Department and Parliamentary Draftsman. He held these positions from 1 January 1901 – and the additional role of Solicitor-General from 1916 – until he retired on 9 February 1932. Although his initial appointments were not formally gazetted until 1 June 1901, he worked for the Commonwealth even before it came into being, including contributing to the drafting of the Australian Constitution. Originally the only member of the Attorney-General's Department, and its sole drafter, Garran carried out the full range of work associated with the provision of legal advice and opinions and the drafting of Bills. He received an initial allowance of £50 per annum for his role as Parliamentary Draftsman.

Founding Government

Only one piece of legislation guided the first six months of the Commonwealth's existence. Drafted at the Constitutional Conventions throughout the 1890s the Australian Constitution Bill was taken to London in 1900 by a delegation led by Edmund Barton. Following its passage through the British Parliament the Commonwealth of

Australia Constitution Act 1900 (UK) was given Royal Assent by Queen Victoria. A duplicate copy of the document with the pen, inkstand and table used at the signing ceremony was presented by the Queen to the delegation. The blueprint for Commonwealth government, the Constitution provided for the establishment of the Australian federation and its institutions; and the authority for shaping, implementing and adjudicating Australian laws.

Government had to be put in place from the ground up. Laws needed to be developed to direct all aspects of the new administration, even those bureaucracies transferred from the States. For example, operation of section 92 of the Constitution, relating to free trade within the Commonwealth, could not begin until uniform customs duties were legislated by Parliament. Ministers who had been appointed at Federation still needed to successfully contest an election if they wished to retain their office. As they scattered to their electorates to campaign to this end, Garran was left to organise the election. This had to be done without the benefit of an electoral Act – which could not be passed until there was a Parliament. Polls were held in all States on 29 and 30 March 1901. While Garran confronted some 'ticklish problems' his task was less tumultuous than the electioneering he described with its shouting on platforms, balconies and street corners, and electors who 'instead of gathering round the radio at home, sallied out to listen to both sides and were free with their comments, as well as with eggs and paper bags of flour', making for 'a picturesqueness and a dramatic quality' lacking from the recorded election speeches of later years.[1]

Commonwealth Parliament assembled for the first time in the Victorian Parliament House in Spring Street, Melbourne, on 9 May 1901. (Victoria's Parliament moved to the Exhibition Building until the Commonwealth's Provisional Parliament House opened in Canberra in 1927.) Parliament's inaugural session ran until 10 October 1902, with a second session between 26 May and 22 October 1903. The 36 Senators and 75 Members of the House of Representatives were all men. Women were eligible to vote and to stand for election under the *Commonwealth Franchise Act 1902* and four women stood for Commonwealth Parliament in 1903, but no woman was successful at a federal election until 1943. Many of the men who had participated in the constitutional conventions of the 1890s were elected to the first Parliament. More than three-quarters of them had previously served in colonial parliaments – 14 as Premiers, four of whom resigned their appointments to take up places in the Commonwealth Parliament. This wealth of political experience was invaluable in laying the legislative foundations of the new nation. Although members of the first Parliament continued to lead Australia for almost a quarter of a century, with every Prime Minister up to 1923 drawn from its ranks, the government changed numerous times in the early decades – five times in the

[1] Robert Garran, 'Armchair Chat', op.cit.

six years following federation. Robert Garran served 11 different Attorneys-General through 15 changes of the office during his 31-year term.

Embryonic Electoral Laws

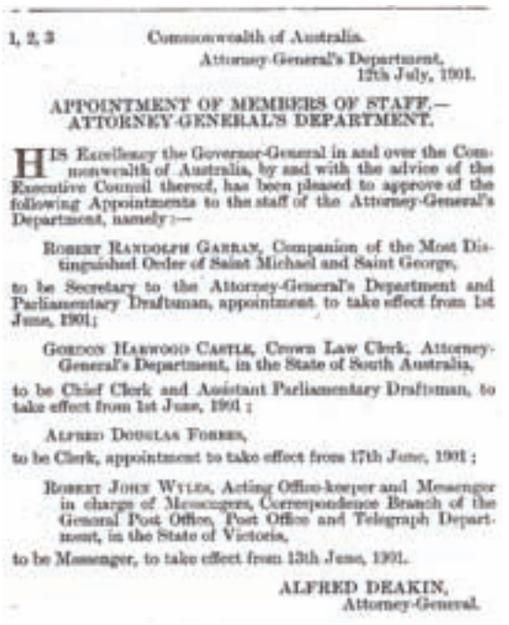
Looking back, Sir Robert Garran reflected on the first federal election:

> *And then the fun began. There was a federal ministry but as yet no federal parliament – that had to be elected. Nowadays in a federal election we have a Commonwealth Electoral Act and the Chief Electoral Officer and his staff and it all runs smoothly. But for the first election these amenities did not exist. There can be no egg till there's a hen to lay it. There can be no Commonwealth Electoral Act till there's a Commonwealth Parliament to pass it. There was only a sketchy provision in the Constitution that meanwhile the electoral laws of each state should as nearly as practicable apply to elections in that state for both federal houses. There were six willing but puzzled state electoral officers. To conduct a federal election with those materials was a delicate operation. Telegrams began pouring in from the six electoral officers with advice as to how their laws would be applied in this or that particular, and meanwhile ministers had gone off on electoral tours all over Australia leaving instructions to me to deal with all enquiries. This was something of a task for a raw hand. Some of the problems were pretty ticklish. It wasn't so much laying down the law but deciding what to do if the law didn't suit.*
>
> [Memoir of Australian Federation, 'Armchair Chat', rebroadcast on Radio National 'Verbatim', 2001.]

First Drafters

More drafters gradually joined the Attorney-General's Department. Gordon Castle's appointment as Chief Clerk and Assistant Parliamentary Draftsman, with effect from 1 June 1901, appeared in the same *Gazette* as Garran's. The notice on 12 July 1901 was the first for staff of the Department. Previously the South Australian Crown Law Clerk and aged 41 when appointed, Castle was said by Garran to have an 'instinctive knowledge' of diverse complex subjects.[2] Drafting was not a discrete role during the early decades – departmental lawyers might provide advice and opinions and work on a draft Bill all in the one day. Castle was also the first Principal Registrar of the High Court from 1903, and Industrial Registrar under the *Conciliation and Arbitration Act 1904* – 'during pleasure and without salary' – from 26 January 1905.

[2] RR Garran, *Prosper the Commonwealth*, Angus and Robertson, Sydney, 1958, p. 153.



1, 2, 3 Commonwealth of Australia.

Attorney-General's Department,
12th July, 1901.

APPOINTMENT OF MEMBERS OF STAFF.—
ATTORNEY-GENERAL'S DEPARTMENT.

HIS Excellency the Governor-General in and over the Commonwealth of Australia, by and with the advice of the Executive Council thereof, has been pleased to approve of the following Appointments to the staff of the Attorney-General's Department, namely:—

ROBERT RANDOLPH GARRAN, Companion of the Most Distinguished Order of Saint Michael and Saint George,

to be Secretary to the Attorney-General's Department and Parliamentary Draftsman, appointment to take effect from 1st June, 1901;

GORDON HARWOOD CASTLE, Crown Law Clerk, Attorney-General's Department, in the State of South Australia,

to be Chief Clerk and Assistant Parliamentary Draftsman, to take effect from 1st June, 1901;

ALFRED DOUGLAS FORBES,

to be Clerk, appointment to take effect from 17th June, 1901;

ROBERT JOHN WYLES, Acting Office-keeper and Messenger in charge of Messengers, Correspondence Branch of the General Post Office, Post Office and Telegraph Department, in the State of Victoria,

to be Messenger, to take effect from 13th June, 1901.

ALFRED DEAKIN,
Attorney-General.

Commonwealth of Australia Gazette, No. 34, 12 July 1901.

Austin Brown moved to the Commonwealth from the Victorian public service on 2 March 1904. Then aged 38, he was appointed as the first Secretary to the Representatives of the Government in the Senate in the Attorney-General's Department. Placed in the Department of External Affairs in 1901, this position was advertised in the Attorney-General's Department in February 1904 when the original occupant resigned to take up an appointment as Associate to a Judge in the recently constituted High Court. The role required legal training and knowledge of parliamentary practice and constitutional law. During the parliamentary recess its occupant was 'required to assist with professional work in the Attorney-General's Department'. Ultimately placed in the Parliamentary Drafting Division the position was filled from the beginning by the drafters in the Department. It was upgraded with Brown's promotion from 1 July 1909, then reclassified at the lower level when he resigned to become Assistant Parliamentary Draftsman for Victoria in August 1910. Brown was replaced by George Knowles, who at age 25 had been promoted to the Department from the Patents Office in November 1907. With his 'great capacity as a lawyer and a draftsman', and an 'extensive knowledge of the Public Service Act and Regulations', Knowles was described by Garran as his 'right hand'[3].

[3] ibid, p. 152.

Attorney-General's Department Staff 1906. BACK ROW L-R: LJ McNamara, IJ Bane, M Ford, RJ Wyles, AD Forbes. FRONT ROW L-R: J Davies, CS Powers, RR Garran, G Castle, AG Brown.
[Attorney-General's Department photograph]

On 1 January 1911 Marmion Bray, from South Australia, was appointed to the Class E position vacated by Knowles. Bray also served as Secretary to Representatives of the Government in the Senate from 6 September 1913 until July 1915. Subsequently placed in a more senior role in the Attorney-General's Department he was later promoted to the Taxation Branch of the Treasury, from where he retired as Deputy Commissioner in 1923. From the state Crown Solicitor's Office in Tasmania Martin Boniwell, destined to become the first dedicated Parliamentary Draftsman, came to the Department at age 29 on 1 June 1912. During long careers in the Department Boniwell, Gilbert Castieau (the next drafter appointed on 13 February 1914) and Joe Tipping (transferred to a Clerk Class E in the Professional Division, from Trade and Customs in February 1918) all served terms as Secretary to Representatives of the Government in the Senate. Their work in this position included advising Ministers on departmental legislation and other matters coming before the Senate, drafting Government amendments, on occasion drafting Bills and amendments for private members, and preparing for publication an annual review of Commonwealth legislation.

Gilbert Castieau CBE

(17 September 1892 – 1 October 1963)

Born in Melbourne, Gilbert Castieau joined the Commonwealth Public Service and began working as a drafter in 1914. He first moved to Canberra with the Attorney-General's Department in 1927, going back to Melbourne for a time as Deputy Crown Solicitor from May 1929. In February 1933 he returned to Canberra, in the new position of Second Assistant Secretary and Second Assistant Parliamentary Draftsman. Made Assistant Secretary and Assistant Parliamentary Draftsman in early 1939, he left drafting when he was appointed Public Service Arbitrator on 8 February 1946. He retired at the end of 1955. In 1970 Castieau Street in Higgins, ACT, was named in his honour.

[Photograph courtesy of Pat Summers, née Boniwell]

Additional resources were used to help meet the challenge of drafting the legislative framework for the Commonwealth. Various Attorneys-General and other Ministers, including Charles Kingston, Minister for Trade and Customs until July 1903, took a hands-on role in drafting Bills. Renowned Queensland and Constitutional draftsman – later the first Chief Justice of the High Court – Sir Samuel Griffith drafted the *Judiciary Act 1903*. In thanking him for this work, Attorney-General Alfred Deakin assured him that 'the remarkable rapidity of draftsmanship and sureness of hand' for which he was 'celebrated in 1891' had been perfected rather than diminished by time.[4] Experienced insolvency judges assisted in the protracted preparation of the first Bankruptcy Bill. This draft remained under the watchful eye of Austin Brown even during his temporary return to the Victorian public service as Assistant Parliamentary Draftsman between 1910 and 1914.

A story Garran told about the involvement with one Bill of Isaac Isaacs (Attorney-General from August 1905 to October 1906) illustrated the close working relationship between Ministers and their departments in the early years:

> *Sir Isaac's capacity for work was amazing. By day he carried the biggest practice of the Victorian Bar; by night he did full justice to the duties of*

[4] A Deakin, letter to S Griffith, 21 February 1901.

Attorney-General. He sometimes slept, I must believe, though I could never discover when. I once left him at the office at midnight, and on my way home took to the printer a draft Bill that was to be ready in the morning. Coming to the office early, I found on my table an envelope from the Government Printer, containing an entirely different draft, which, in some wonderment, I took in to the Attorney. He confessed that in the small hours he had had a new inspiration, had recovered the draft from the printer, and had reshaped it, lock, stock, and barrel.[5]

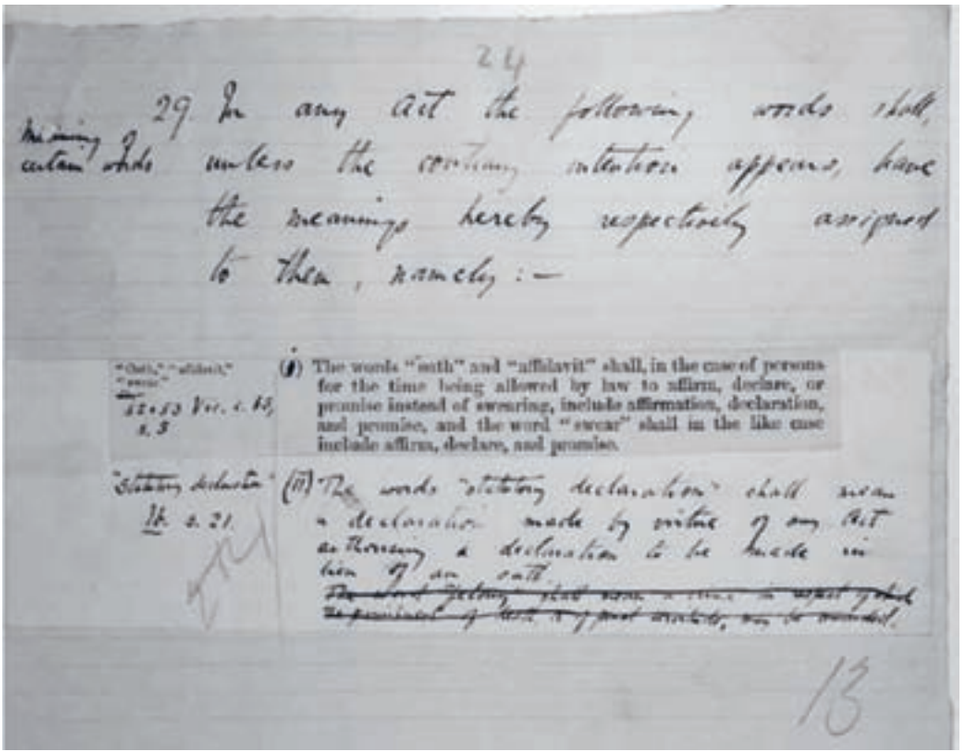
Isaac Isaacs was Attorney-General from 5 July 1905 to 12 October 1906. Then appointed to the High Court, he remained on the Bench for 25 years, including for a brief period as Chief Justice. Knighted in 1928, Sir Isaac became the first Australian-born Governor-General when he took the oath of office on 22 January 1931. He retired in January 1936, and died aged 92, in 1948.

[Photograph courtesy of the Parliamentary Library and Auspic]

Beginning Drafting

Much of the early drafting was done by hand. Typewriters were comparatively new and not readily available in all offices. When the machines were first introduced there was some resistance to typewritten documents from people who found the unaccustomed script difficult to read. 'Cut and paste' was used literally, involving actual scissors and glue. A hectograph (or jellygraph) was commonly employed for copying documents. The image of a page was transferred, in reverse, to an inked gelatin pad in either a flatbed pan or stretched on a metal frame in a rotary machine. Copies were made by pressing paper against the pad. Depending on the quality of the master, and the skill of the operator, the hectograph could provide between 20 and 80 copies of a page. Ink could be sponged from the top of the gelatin and the pad reused for another image – so long as the surface was kept clean, and undamaged by fingernails, during duplicating. Various colours of hectograph ink were available but, because of its density and contrast, purple was the most popular.

[5] RR Garran, *Prosper the Commonwealth*, p. 157.



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29. In any Act the following words shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely :—

(i) The words "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm, declare, or promise instead of swearing, include affirmation, declaration, and promise, and the word "swear" shall in the like case include affirm, declare, and promise.

(ii) The words "statutory declaration" shall mean a declaration made by virtue of any Act authorising a declaration to be made in lieu of an oath

13

Robert Garran's draft section 29 of the Acts Interpretation Bill demonstrated 'cut and paste' as applied in 1901. [Digital copy courtesy of the National Archives of Australia]

Unique opportunities to lay down statutes without precedent were embraced by the first Commonwealth drafters. They aimed for a direct, lucid style, free of superfluous qualifications and technical jargon. Recognisable by their crisp appearance, early Commonwealth Acts were unencumbered by the economic, social and technological complexities which increasingly influenced legislation in later decades. One of the Acts which set this standard was the *Customs Act 1901*. Drafted by Gordon Castle under instruction from the Minister, Charles Kingston, it dealt with complex and extensive subject matter in the 'modern' manner. Garran introduced an innovative textual amendment system to make it easier to incorporate alterations without having to repeal, reconstruct and re-enact an entire piece of legislation. The *Amendments Incorporation Act 1905* provided for any amendments repealing, omitting, substituting or inserting 'certain words or figures' to be incorporated in subsequent reprints of the principal Act.

Opening the Statute Book

Parliament having got to work, the first job for my Department was to draft the Bills necessary for a beginning. It was a thrilling experience to open a new Statute Book with the freedom that comes from not being tied to the forms and idioms of a long line of predecessors. We tried to set an example of clear, straightforward language, free from technical jargon. I had with me a skilful and experienced draftsman in Gordon Harwood Castle from Adelaide. We began with a set of Customs and Excise Bills in collaboration with C. C. Kingston, Minister for Customs, himself a fine, if unconventional, draftsman. We took the existing models for such Bills and cut them to the bare bone and made them like a drawing by Phil May, with every superfluous line rubbed out. Mr Justice O'Connor once parodied our style like this:

> *Every man shall wear:*
> *(a) Coat*
> *(b) Vest*
> *(c) Trousers*
> *Penalty: £100.*

In the Customs and Excise Bills, under Kingston's influence, I think we carried things a bit too far. Like many innovators, he was apt to over-strain his theory. Not only was every sentence clear and direct, but every sentence was a separate section. There were Parts and Divisions, but he disdained the grouping of related sections into sub-sections, with some loss of organic unity. Perfect clearness requires not only a series of precise statements, but some indication of the relation between those statements, and I think that the staccato sections of these Acts, sometimes consisting of only half a dozen words, are wanting in this respect.

Drafting a statute offers no scope for literary graces—except the utilitarian one of perfect clarity—but it is a fine exercise in precise expression. I have to admit, however, that what seems crystal clear to the draftsman is not always clear to the High Court.

Of course we set our faces against the practice dear to earlier draftsmen of never mentioning a horse without adding mare, foal, colt, filly, or gelding—ransacking the dictionary for verbal equivalents till the page looked like an extract from Roget's Thesaurus.

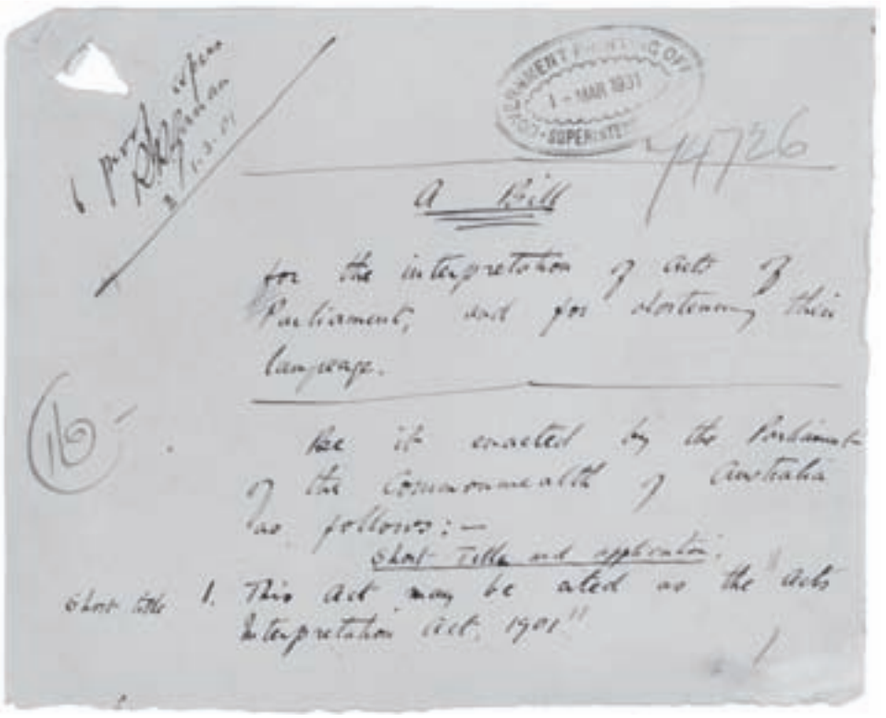
I have to admit, too, that later, when legislation grew more complex, we were not always able to keep to this simple pattern. When war expenditure compelled the Commonwealth to resort to direct taxation, our first Income Tax Assessment Act was a thing of beauty and simplicity that would not have shamed Wordsworth or T. S. Eliot. But a graduated income tax tempts the crafty taxpayer to all sorts of devices to reduce his assessment … so the battle of wits between taxpayer and taxation office led to all sorts of barbed-wire entanglements to keep the wily taxpayers from slipping through, till the Act became the literary monstrosity it is today.

[Sir Robert Garran writing in the 1950s, *Prosper the Commonwealth*, pp. 145-146.]

Legislative Beginnings

Passage of the first Commonwealth Act – the *Consolidated Revenue Act (No. 1 of 1901*) – brought relief for Treasury officials operating under the limited provisions of the Constitution relating to financial appropriations. Assented to on 25 May 1901 the Act (devoid of a provision creating a short title for the Act) was passed to provide funds to meet the costs of the first six months of federal government.

Introduced first but passed second was an Acts Interpretation Bill. Described by Garran as 'the draftsman's tool for securing economy of words in all Acts',[6] the Bill was presented to the brand new House of Representatives on 10 May 1901. The *Acts Interpretation Act 1901* received Royal Assent on 12 July. Based on contemporary law in England, New Zealand, New South Wales and Victoria it was intended to ensure uniformity in the interpretation of words and phrases in Commonwealth legislation.



The first page of Robert Garran's early draft of the Acts Interpretation Bill 1901.
[Digital copy courtesy of the National Archives of Australia]

[6] ibid, p. 146.

Legislation essential to Commonwealth administration was drafted rapidly. Laws to ensure supply, regulate governance and immigration, and to administer defence, customs, the public service, posts and telegraphs, elections and the judicial system were passed within the first three years. Commencing on 1 January 1902, the *Audit Act 1901* contained the first Commonwealth offences (relating to fraud, forgery and perjury in relation to public money) and was the first to confer coercive powers on Commonwealth officers. Political commentator and ardent supporter of Federation Sir John Cockburn reported in 1901: 'The ponderous machinery of the Commonwealth is working into its bearings in a manner which gives promise to the efficient exercise of the important powers entrusted to the administration.'[7]

Implemented on 1 January 1903 the *Commonwealth Public Service Act 1902* regulated working life for the then 11 374 officers covered by the new laws. It also introduced the first superannuation scheme for Commonwealth public servants. Based largely on previous colonial legislation it incorporated recognition of the need for reform in several states. In this and many other areas, drafters grappled with the different systems and practices in operation in all the states as they developed laws and regulations for the whole country. Concerned comments in Parliament acknowledged the demands this placed on the expertise of the Attorney-General's Department and the consequent strain on drafting staff.

Explanatory Techniques

Various explanatory and comparative techniques, aiming to make it easier for parliamentarians to understand the intent and effects of draft legislation, were gradually developed. In July 1901 a memorandum was tabled in Parliament, showing amendments to the Public Service Bill made in the Committee of the Whole. In this, and in later versions of various Bills, amendments were made immediately obvious by the use of heavy black type to show new material and strike-through text to indicate deletions. Subsequently noted as being 'attended with some difficulties' the practice was largely abandoned after 1902. Similar methods for showing changes were used from 1909 in 'black-type memoranda' – anticipatory reprints produced to demonstrate what Acts would look like if proposed amendments were made. Other approaches to aiding understanding included circulation of sheets of amendments explaining the differences between drafts, for example the Judiciary Bills in 1902 and 1903. Occasionally provided in drafts such as the Public Service Bill in 1901 and the Navigation and Shipping Bill of 1904, a table of contents was not commonly used as a legislative aid until 1973. Some early Bills included marginal notes indicating the location of precedents from other jurisdictions. In a precursor to the *Amendments*

[7] JA Cockburn, *Australian Federation*, Horace Marshall and Son, London, 1901, pp. 8-9.

Incorporation Act 1905, which applied the principle generally, the amending *Defence Act 1904* required that all amendments of the Principal Act be incorporated in any future reprints. Introduced as a very short 'machinery' measure, the Amendments Incorporation Bill excited considerable debate in Parliament – one proposed addition would have required the first page of each copy to include a list of all Acts amending the original one.

Tasmanian Senator John Keating, the youngest member of the first Commonwealth Parliament when he was elected at age 28, presented its first two 'explanatory memoranda'. As Honorary Minister (without portfolio) responsible for the drafting of the highly technical Copyright Bill in September 1905 he provided an accompanying 'Memorandum of References to Similar Provisions in Acts and Bills' which listed every clause in the Bill, indicating the legislative precedents from which each had been derived. A four-page memorandum Senator Keating supplied with the Commonwealth Electoral Bill several days later gave a concise summary of the effect of each amendment, and the necessity or reason for the change.

Comparative memoranda setting out the differences between existing and proposed measures were more commonly used in the early decades. A table comparing clauses of the 1905 electoral Bill with sections of the *Commonwealth Electoral Act 1902* was prepared prior to the explanatory memorandum. From its first draft in 1907 the voluminous and complex Bankruptcy Bill was complemented by a detailed comparative statement of the principal features of English bankruptcy and insolvency legislation and that of all the Australian States. Stating his intention to 'facilitate the ascertainment of the existing law and the points of difference therein with a view to securing uniformity without departing from established principles'[8] the drafter, Austin Brown, produced a valuable reference document which accompanied the Bill throughout its prolonged passage and implementation. Before the provision of explanatory material became standard practice in the 1980s different versions of the memoranda – incorporating amendments made in the originating chamber – were occasionally presented to the Senate and the House of Representatives.

[8] AG Brown to Secretary Attorney-General's Department, attaching a 'Comparative Statement of the Leading Features of the English and State Acts', 1 May 1907.

1905.

THE SENATE.

COPYRIGHT BILL.

MEMORANDUM OF REFERENCES TO SIMILAR PROVISIONS IN ACTS AND BILLS.

(Circulated by Senator Keating.)

In the subjoined References—

(1) "Copyright Bill" means the print of 1900 of Copyright Bill (House of Commons, No. 295, Vol. I., 1900) to amend and consolidate the Law relating to Literary Copyright; and

(2) "Copyright (Artistic) Bill" means the print of 1900 Copyright (Artistic) Bill (House of Lords, Bill 192, Vol. IV., 1900) to amend and consolidate the Law relating to Artistic Copyright.

Clauses in the above two Bills are referred to as sections.

Clause 5. Copyright Bill, definition "simultaneously."
Clause 6. Copyright Bill, ss. 4 (4), 5 (5), 6 (7).
Clause 7. Application of Common Law.
Clause 8. Cf. s. 8, *Patents Act* 1903.
Clauses 9, 10, 11, 12. Cf. Part II., *Patents Act* 1903.
Clause 13. Copyright Bill, s. 3 and s. 4 (1).
Clause 14. Copyright Bill, s. 5 (1), (2).
Clause 15. Copyright Bill, s. 6 (1), (2).
Clause 16. Copyright Bill, ss. 4 (5), 5 (4), 6 (4).
Clause 17. Copyright Bill, ss. 4 (3), 5 (3), 6 (4), 6 (6), 7 (2), 8.

TERMS OF LITERARY COPYRIGHT AND PERFORMING RIGHT IN THE UNITED KINGDOM AND THE AUSTRALIAN STATES AND CANADA.

U.K., 5 and 6 Vict., ch. 45, s. 3.—Life of author and seven years or 42 years, whichever longer.
N.S.W., 42 Vict. No. 20, ss. 3, 18.—Life of author and seven years or 42 years, whichever longer.
Vict. No. 1676, ss. 15, 30.—Life of author and seven years or 42 years, whichever longer.
Qld., Acts of U.K. apply.—Life of author and seven years or 42 years, whichever longer.
S.A. No. 95, 1878, ss. 13, 28.—Life of author and seven years or 42 years, whichever longer.
W.A. No. 24, 1895, ss. 5, 24.—Life of author and seven years or 42 years, whichever longer.
Tas.—Acts of U.K. apply.—Life of author and seven years or 42 years, whichever longer.
Canada, Revised Statutes, 1886, ch. 62, ss. 4, 17.—28 years, with conditional extension for additional fourteen years.

[C. 3]—150/12.9.1905.—F.3402.

First page of explanatory memorandum (Senate version), Copyright Bill 1905.

Early Decades

Passing some necessary legislation was not straightforward. Robert Garran bore the brunt of the two years of work preceding passage of the *Judiciary Act 1903* and subsequent laws relating to courts – including High Court procedures, evidence, juries and publication of rules. The first federal tribunal, the Commonwealth Court of Conciliation and Arbitration, was established under the *Conciliation and Arbitration Act 1904*. Initially presided over by a High Court Judge the Court had both arbitral and judicial powers, and was responsible for the registration of 'representative bodies of employers and employees'.

In addition to the Acts and regulations actually implemented, drafters were occupied with developing others which would prove to have long gestation periods. The *Crimes Act 1914* was passed after seven years of deliberation – it legislated the first serious offences, providing the death penalty for the most serious offence of treason. Work on bankruptcy legislation which started in 1904 finally came to fruition with the *Bankruptcy Act 1924*. Progress with companies law, being developed in tandem with bankruptcy, came to a sudden halt in 1909 when the High Court determined in the case of *Huddart Parker*[9] that the Commonwealth was not permitted to enact laws which would affect interstate trade, an area reserved for state power. It was more than half a century later before any Commonwealth legislation was passed in this area. Despite frequent calls for Commonwealth marriage and divorce laws the first of these was not passed until 1959.

Following the first federal referendum on 12 December 1906, minor amendments to Section 13 of the Constitution (concerning terms of senators) came into effect on 3 April 1907. Numerous laws on wide-ranging aspects of governance and government services – including revenue, finance, elections, pensions, industry, customs, immigration and defence – were passed in the years preceding the First World War. The first Commonwealth tax was passed in the *Land Tax Act 1910*. Forty-three Acts were passed in 1912 – the highest number to that time. One major drafting success during this period was the *Commonwealth Bank Act 1911*. Instructions issued to Gordon Castle directed simply: 'A Bill is required for the establishment of a Commonwealth Bank.'[10] Given until the next day to produce the Bill, Castle and a junior drafter worked through the night to meet the deadline. The legislation stood the test of time until new policies and functions necessitated extensive change in the 1950s.

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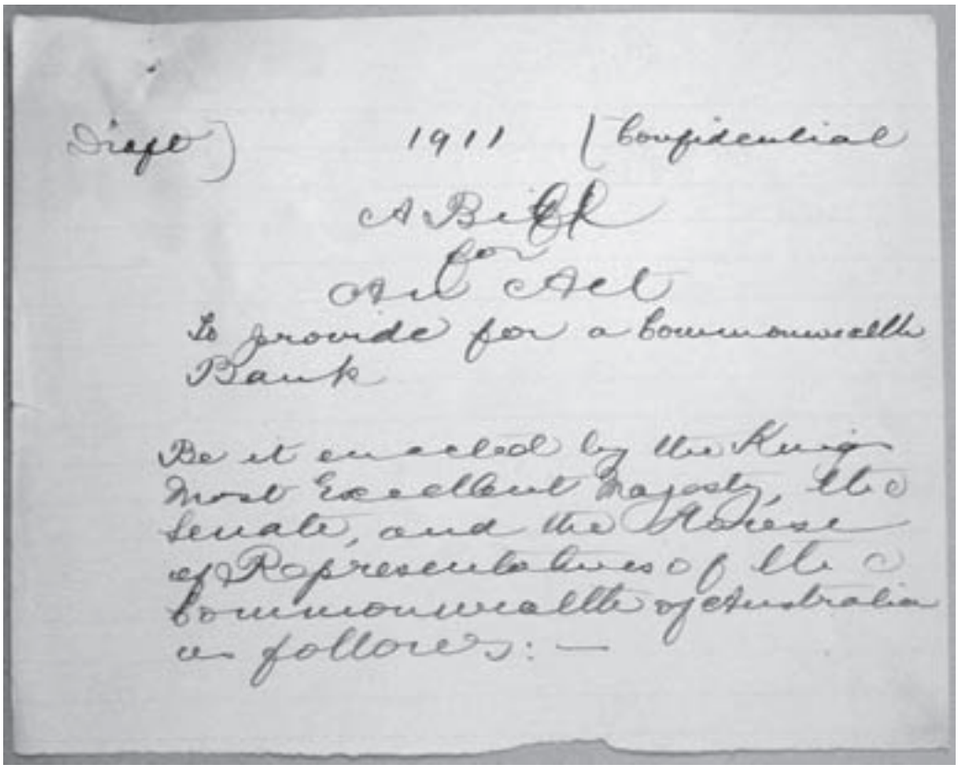
[9] *Huddart, Parker & Co. Pty Ltd v Moorehead* [1909] HCA 36; (1909) 8 CLR 330.
[10] RR Garran, *Prosper the Commonwealth*, p. 153.


Diagr) 1911 (Confidential
A Bill
for
An Act
To provide for a Commonwealth
Bank
Be it enacted by the King's
Most Excellent Majesty, the
Senate, and the House
of Representatives of the
Commonwealth of Australia
as follows:—

Gordon Castle's handwritten draft of the title page of the 1911 Commonwealth Bank Bill. The singularly brief drafting instructions did not appear on the Bill file.
[Digital copy courtesy of the National Archives of Australia]

Wartime Drafting

War-related considerations dominated drafting in the Commonwealth's second decade. War Precautions and Trading with the Enemy Acts were passed in 1914 and an Enemy Contracts Annulment Act in 1915. The *War Precautions Act 1914* gave the Government extensive powers to make regulations on any issue associated with the war. Many domestic matters, including the price of food, were deemed by the High Court to have a relevant connection with the defence of the Commonwealth in wartime. Work in the Attorney-General's Department grew considerably in response to enormous demands for legislation, regulations and other instruments under the War Precautions Act, and drafting strength needed to be increased.

Admitting an enhanced awareness of the need to compete for scarce staffing resources in the face of such an overwhelming workload, Robert Garran noted:

> *The War Precautions Act and the other war legislation were only a beginning prearranged for such an emergency. It was the regulations under these Acts that immersed my Department. As soon as it was found out that the High Court would give us plenty of scope, our regulations factory, spurred on by all the departments, began running full speed. It dealt largely with the enemy within the gates, and with persons of enemy origin ... [but] the ordinary citizen was also controlled in many ways to secure maximum efforts in the general defence programme ... The regulations were mostly expressed widely to make sure that nothing necessary was omitted, and the result soon was that John Citizen was hardly able to lift a finger without coming under the penumbra of some technical offence against the War Precautions Regulations.*[11]

Wartime expenditure compelled the Commonwealth to resort to direct taxation with the first Income Tax Assessment Act passed in just three weeks in 1915. Outlining the circumstances which prompted the Commonwealth Government to finally exercise its non-exclusive income taxing power Attorney-General William Morris (Billy) Hughes noted that the scheme was appropriate to a modern community. He described it as both an effective means of raising money for the conduct of government, and an instrument of social reform. Amendments to the Act before the end of the same session of Parliament set the pattern for regular and frequent changes to tax laws.

The *Solicitor-General Act 1916* enabled the appointment of Garran as Solicitor-General. He was given many of the powers of the Attorney-General to allow Hughes – who was also the Prime Minister – to concentrate on his many other responsibilities. Legislation was passed to set up a Commonwealth police force (attached to the Attorney-General's Department) during the war and a small security investigation service in 1919. Post-war drafting included the *War Precautions Act Repeal Act 1920*, peace treaty legislation, an Air Navigation Act in 1920, and an amendment to the Crimes Act which protected the word 'ANZAC' against misuse for commercial or inappropriate purposes. Partly in response to a situation where the New South Wales government refused to allow state police to serve summonses on Australian Seamen's Union officials during a strike, a Bill to create a Commonwealth Peace Officers force was drafted in 1925.

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[11] ibid, p. 222.

A TEMPORARY SUSPENSION

During the week a couple of days passed without any issue of new War Precautions Regulations.

MR. HUGHES: 'What's the matter with the machine?'

THE ENGINEER: 'You see, she's been doing such a lot of overtime lately I was afraid she might run hot.'

This cartoon by Hal Eyre appeared in the *Daily Telegraph* on Saturday 8 December 1917. It showed Prime Minister Billy Hughes remonstrating with Sir Robert Garran about a drop in the production of War Precautions Regulations. An improbably slim edition of Quick and Garran's *Annotated Constitution of the Australian Commonwealth* was tucked into Sir Robert's back pocket. The drawing captured the contrasting size, appearance and characteristics of the two men who, despite their many obvious differences worked marvellously well together.

Various amendments to the Public Service Act ensured that officers who enlisted for war service would not have their normal public service conditions and entitlements prejudicially affected. Recruitment preference was accorded to returned soldiers, and further concessions relating to service entry examinations, educational qualifications and appointment conditions were extended under provisions passed in 1917. Drafting for public service reform on a wider scale followed two Royal Commissions of the era. Established at the end of the First World War, the Economies Commission was directed to 'consider and report upon the public expenditure of the Commonwealth of Australia with a view to effecting economies'. In 1918 the Royal Commission on Public Service Administration (McLachlan Commission) was tasked with assessing the impact on the management and functioning of the service of relevant Acts, and recommending improvements.

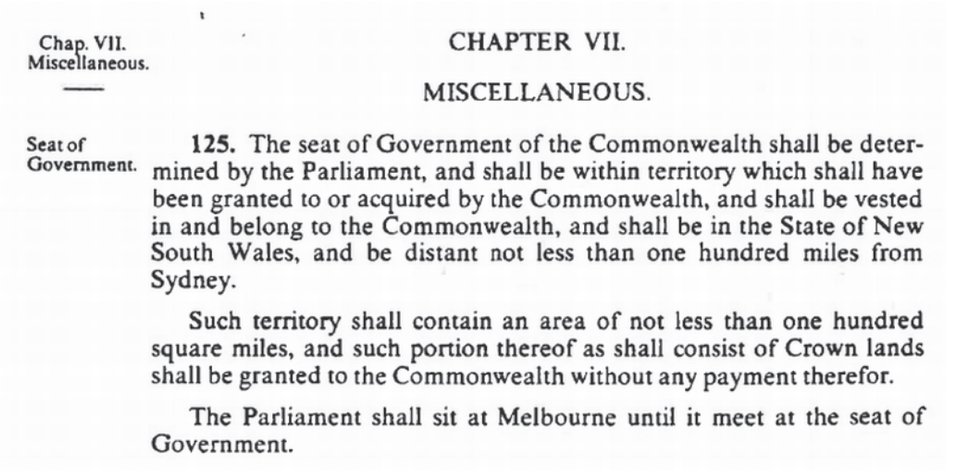
William Morris Hughes served a record four terms as Attorney-General – from 13 November 1908 to 2 June 1909; 29 April 1910 to 24 June 1913; 17 September 1914 to 21 December 1921; and 20 March 1939 to 7 October 1941. He was also Prime Minister from October 1915 to February 1923.

[Photograph courtesy of the Attorney-General's Department]

Major Moves

Introduced in April 1921, the Bill 'to consolidate and amend the law regulating the Public Service and for other purposes' was finally passed in October 1922. A complementary Superannuation Act passed at the same time provided public servants with an assured income on retirement and was the third part of a wide-ranging legislative overhaul of the Commonwealth service – the first being the *Arbitration (Public Service) Act 1920*. Becoming the legislative basis for the next 77 years, the *Public Service Act 1922* set up a Board of Commissioners; replaced the previous Professional and Clerical Divisions with the First, Second, Third and Fourth Divisions; and provided for classification of all officers in the service with salaries to be fixed by regulation rather than prescription in schedules to the Act.

Also destined to have a momentous impact on Commonwealth public servants were the various Seat of Government laws passed from 1904 onwards. Provided for by section 125 of the Constitution, the capital territory was to be in New South Wales but not within 100 miles of Sydney. The *Seat of Government Act 1908* specified a site in the Yass-Queanbeyan area, and the *Seat of Government (Administration) Act 1910* provided for the provisional government of the 'Federal Capital Territory' from 1 January 1911. Australia's national capital was founded and named Canberra in 1913. Ordinances were drafted to make legislative provision for building the capital – the City Area Leases Ordinance of 1921 becoming the long-term basis of the tenure system for city lands. The first auctions of city leases took place in 1924.



Chap. VII.
Miscellaneous.

CHAPTER VII.

MISCELLANEOUS.

Seat of Government.

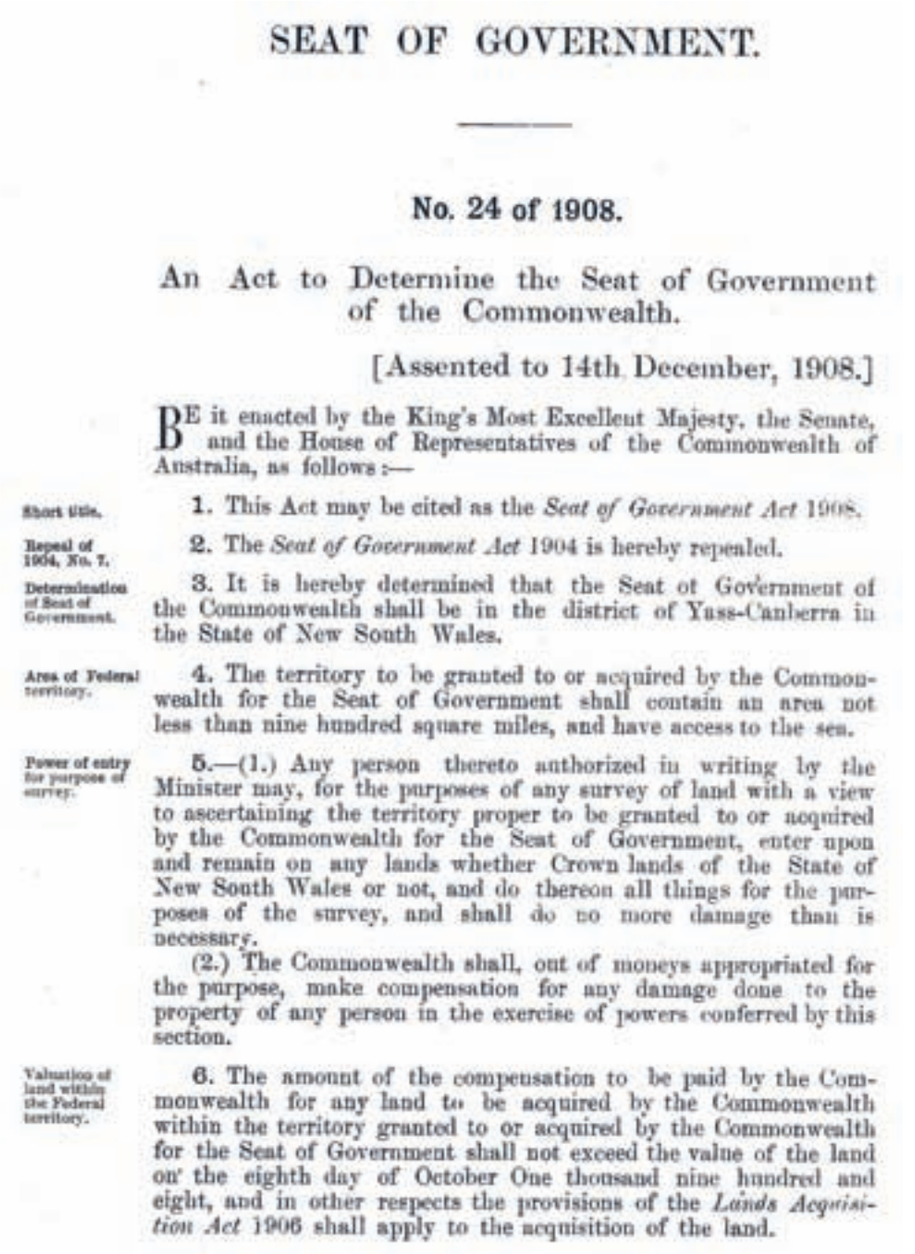
125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

Arrangements for the Commonwealth Seat of Government, as provided for under section 125 of the Commonwealth of Australia Constitution Act.

Living in tents, huts and temporary houses, Canberra's builders and construction workers laboured to erect homes, hotels and offices, lay down roads and railway lines, install water, power and sewerage, and develop transport, shopping, health, educational and sporting facilities. The Crown Solicitor's office which was responsible for legal work associated with the transfer of the Government to Canberra – including the taking over of transferred officers' homes in Melbourne – established a single person presence in Canberra from around 1925, well in advance of the first group transfer in 1927.



SEAT OF GOVERNMENT.

No. 24 of 1908.

An Act to Determine the Seat of Government of the Commonwealth.

[Assented to 14th December, 1908.]

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

Short title.

1. This Act may be cited as the *Seat of Government Act* 1908.

Repeal of 1904, No. 7.

2. The *Seat of Government Act* 1904 is hereby repealed.

Determination of Seat of Government.

3. It is hereby determined that the Seat of Government of the Commonwealth shall be in the district of Yass-Canberra in the State of New South Wales.

Area of Federal territory.

4. The territory to be granted to or acquired by the Commonwealth for the Seat of Government shall contain an area not less than nine hundred square miles, and have access to the sea.

Power of entry for purpose of survey.

5.—(1.) Any person thereto authorized in writing by the Minister may, for the purposes of any survey of land with a view to ascertaining the territory proper to be granted to or acquired by the Commonwealth for the Seat of Government, enter upon and remain on any lands whether Crown lands of the State of New South Wales or not, and do thereon all things for the purposes of the survey, and shall do no more damage than is necessary.

(2.) The Commonwealth shall, out of moneys appropriated for the purpose, make compensation for any damage done to the property of any person in the exercise of powers conferred by this section.

Valuation of land within the Federal territory.

6. The amount of the compensation to be paid by the Commonwealth for any land to be acquired by the Commonwealth within the territory granted to or acquired by the Commonwealth for the Seat of Government shall not exceed the value of the land on the eighth day of October One thousand nine hundred and eight, and in other respects the provisions of the *Lands Acquisition Act* 1906 shall apply to the acquisition of the land.

The entire *Seat of Government Act 1908*, specifying the site for the new federal capital in the Yass-Canberra district. Repealed, the *Seat of Government Act 1904* had named Dalgety, in southern New South Wales as the location. The later *Seat of Government Acceptance Act 1909* defined the area of the Federal Capital Territory, and made arrangements for interim administration under existing New South Wales law.

Rhyme or Reason

Patently enthusiastic about the new capital city, Sir Robert Garran was also described by Professor Kenneth Bailey as 'an inveterate and incorrigible – and extremely entertaining – versifier'. Sir Robert often had his verse published in the local press. This whimsical rhyme appeared in *The Canberra Times* some years after his death.

Nothing on earth will rhyme with Canberra
Except perhaps Irene Vanbrugh
(And she, I'll swear till the skies are blue with it
Has nothing at all in the world to do with it)
How, I ask you, could ever a man be ra-
Pscallion enough to go and plan a borough
With such an unrhymable name as Canberra.

[*The Canberra Times*, 16 October 1971, p. 13.]

Moving the Commonwealth Government from Melbourne to Canberra was a major exercise – unlike the move from Sydney to Melbourne early in 1901 when Prime Minister Edmund Barton was said to have to have carried all the Government's principal papers in a 'black hand-bag'.[12] Parliament, consisting of 36 Senators and 76 Members of the House of Representatives,[13] last met in Melbourne on 24 March 1927. With the announcement in the House that the next meeting would be in Canberra, the Members present joined hands and sang *Auld Lang Syne*. A long recess was scheduled to facilitate the move, with formal motions passed to grant Members and Senators extraordinary 'leave of absence' to prevent them losing their seats in the interim. The shortened parliamentary session was the cause of the first critical comments from several Members in the new Provisional Parliament House. Then in Opposition, Billy Hughes declared: 'This country would be better governed, and our legislation would be more calculated to promote the prosperity of the country, if we sat more regularly, and if, on being called together at infrequent intervals, we were not obliged to work at high pressure, the Government forcing through legislation almost at the point of a bayonet.'[14] Despite the move, the House of Representatives managed to sit for a total of 59 days and the Senate for 44 days during the year. Thirty-eight Acts were passed, 35 initiated by the House and three by the Senate.

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[12] C Hughes, *Mr Prime Minister: Australian Prime Ministers 1901–1972*, Oxford University Press, Melbourne, pp. 19-20.
[13] Including one from the Northern Territory who had restricted voting rights.
[14] G McIntosh, 'As It Was In The Beginning (Parliament House in 1927)', Department of the Parliamentary Library, 2001, p. 6.

Ardent supporters of the national capital, Sir Robert Garran and Lady Garran (on the left) with Sir Littleton Groom and Lady Groom at Telopea Park in 1926. A member of the first Commonwealth Parliament, Sir Littleton served two terms as Attorney-General during 1906–1908 and 1921–1925. He was the Minister responsible during much of the planning phase for the new city, and was Speaker for the first sittings in the Provisional Parliament House in 1927.
[Photograph courtesy of the National Archives of Australia]

While the Crown and traditions of English law remained significant, the move to the new capital was seen as an opportune time to reassess the Australian Constitution. Changes proposed in 1926 to extend the Commonwealth's legislative power over aspects of industry, commerce and essential services were opposed in various quarters as being piecemeal, when a comprehensive review of the Constitution was needed. The proposals were rejected by the public at a referendum held in September that year. After negotiations for a joint committee to investigate the workings of the Constitution broke down the Government appointed a Royal Commission on the topic in August 1927. Comprising parliamentarians and external experts and representatives, the Commission was tasked with investigating and making recommendations on the workings of the Constitution since Federation, and with considering a list of specific

problems. Eventually reported on in 1929, the Commission's deliberations resulted in just a 'useful student's textbook' and a small amendment to the Judiciary Act.[15]

Settling In

Following the inaugural parliamentary sitting in Canberra on 9 May 1927 the transfer of the public service began. Long anticipated, the move was still resisted by many public servants and their departments. Notable exceptions were the senior officers of the Attorney-General's Department. Led by Sir Robert Garran and George Knowles, in August 1927 twenty staff of the Department shifted to Canberra in the first transfer of public servants. Other drafters who moved early included Martin Boniwell, Gilbert Castieau, Les Lyons, John Gamble, Joe Tipping and Bill Fanning.

Prevailing building covenants, graded relocation and rental allowances and the system of allocating houses according to level in the public service all preserved class distinctions in Canberra suburbs. At the elite end of the scale, the Garran, Knowles and Boniwell families built homes in Mugga Way, Red Hill – naming them 'Roanoke', 'Ellanshaw' and 'Redlands' respectively. The Castieaus went to Forrest (originally called 'Blandfordia') and the Gambles and Tippings to Griffith. Single men such as Les Lyons and Bill Fanning were assigned to hostels – in this case in Ainslie and Brassey House respectively. Families moved into hotels for lengthy periods while their homes were being built – rubbing shoulders with the parliamentarians who lived in hotels such as the Kurrajong and the Hotel Canberra during sitting periods. Until after a Federal Capital Territory referendum in 1928 all the hotels were 'dry'. Prohibition was in force and anyone wishing to imbibe needed to go to Queanbeyan for the purpose.

Despite the Public Service Board's optimistic assertion that 'life in the inspiring and healthy surroundings of a new city' would develop 'an even higher degree of efficiency and a keener desire to render valuable service to the public than was hitherto practicable',[16] Canberra at this stage was definitely pioneer territory. The contrast with Melbourne was stark. Garran, who stayed in Canberra after he retired, nonetheless acknowledged that moving there subjected officers to 'certain real difficulties'.[17] These included problems with education, transport and medical services; separation from family and friends; difficulties in family living and the cost of family holidays; small homes and inferior buildings; a dearth of cultural facilities such as theatres, concerts and libraries; and the lack of good domestic help and services such as gas. Canberra was hit

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[15] G Sawer, *Australian Federal Politics and Law 1901-1929,* Melbourne University Press 1956, p. 292 and p. 326.
[16] Public Service Board, *Annual Report*, 1928, p. 25.
[17] Correspondence of Robert Randolph Garran. National Library of Australia MS 2001: Garran Papers, Series 9 (Reference Number 2001/9/31).

early by the Great Depression. The slump which began there in 1927 meant severe hardship for the city's earliest residents and slowed building for many years.

'Roanoke', the Garran family home at 22 Mugga Way, Red Hill, circa 1929.
[Photograph courtesy of the National Archives of Australia]

With a population of just over 6 000 by mid-1928, Canberra was still very much a small town, subjected to the highest cost of living of any capital city in Australia. Rent was high, and home and office accommodation was inadequate for decades. Previously sheep grazing country, the newly treed landscape on either side of the Molonglo River offered little protection during bitter winters, and left a legacy of swarms of blowflies. Unsealed roads (alternately muddy or blowing dust) connected the rows of cottages in scattered suburbs, the crowded hotels and hostels, three small shopping centres at Civic, Manuka and Kingston, and Parliament House with its nearby offices at East Block and West Block. The majority of residents did not own cars so caught the tuppeny bus, tramped across frequently icy paddocks, or rode bicycles or even horses to work. Houses had no street numbers to begin with and lines of dwellings built to the same design often resulted in confusion, for residents and visitors alike.

Most people arrived at Canberra's rudimentary railway station at the end of a long and uncomfortable train journey from Melbourne, during which they needed to alight at wayside stations for something to eat and, because of differing rail gauges (until 1962),

to change trains at Albury. Members of Parliament considered the whole arrangement so primitive that three days a week in the capital was as much as they would countenance. Railway services were arranged around sitting times to allow them to arrive as late and leave as early as possible. Many agreed with the Secretary to the Prime Minister's Department who described the best view of Canberra as 'from the back of the departing train'.[18]

Canberra circa 1930. View from Mount Ainslie, looking across Braddon and Haig Park towards Black Mountain.
[Photograph courtesy of the National Library of Australia]

Undaunted, pioneering members of the Attorney-General's Department settled in to life in Canberra, and to bring the city to life. Work colleagues became enduring friends. Making their own entertainment, Canberra's residents arranged picnics, sumptuous afternoon teas, dinners and garden parties or played progressive bridge. Dances were held at the Albert Hall, and the Arts and Literature Society put on shows. Pictures at the Capitol Theatre on Saturday nights were social highlights, even when the theatre was so

[18] G McIntosh, op.cit, p. 4.

cold people needed to bring hot water bags to sit through the movie. Another popular pastime was watching from the visitors' gallery while legislation was being debated in Parliament.

Home owners took pride in their gardens and domestic advances. With plenty of water available in Canberra in those days, households operated with coppers in the laundry and chip heaters, one brand of which advertised its claim to be so efficient you could get a 'hot shower on one *Hansard*'.[19] The Knowles residence was notable for its advanced central heating and hot water boilers, fired by coke brought in by rail from Newcastle.[20] Supported by many of the early residents cultural, educational and sporting facilities gradually developed. Over the following decades – set an outstanding example by both Garran and Knowles, who were determined to help make Canberra a cultured and civilised city – many drafters became active contributors to various arts and literature societies, recreational and sporting associations, clubs, church communities, musical bodies and educational institutions.

The Knowles home, 'Ellanshaw' at 16 Mugga Way, Red Hill, in 1929. The family had a house of the same name in Hawthorn, Melbourne before they moved to Canberra. The Canberra house was sold to the Netherlands Legation in 1943.
[Photograph courtesy of the National Archives of Australia].

[19] National Library of Australia Oral History collection: Betty Key (neé Hall).
[20] MJS Knowles, 'Canberra in the early government period', *Canberra Historical Journal,* New Series No. 19, March 1987, p. 4.

Green Fingers

In the nascent city of Canberra there were many enthusiastic gardeners. Before the arrival of fruit and vegetable markets, gardens were as practical as aesthetic.

As well as a tennis court, croquet lawn and enviable front garden, the Knowles residence in Mugga Way boasted seven apple trees, three pears, three cherries, three peaches, two quinces, two plums, two walnuts and two almond trees, four each of black, red and white currant bushes, twelve English gooseberries, an asparagus bed of 110 plants, a vegetable garden and a strawberry patch. The Canberra circuit of the Methodist Church was constituted there in 1929, and the Church's annual garden party was held in the grounds until 1942. Both a social and a fundraising event its amusements included tennis, deck tennis, croquet, clock golf, peg and deck quoits and a 'bull-board', as well as afternoon tea and cake stalls. Ella Knowles grew and sold poppies and lilies, over time raising hundreds of pounds for the Church's overseas mission fund. Mervyn Knowles (Sir George's son) told of a non-profit-making arrangement with the chauffeur of Hire Car No. 1 who was permitted to drive visitors to Canberra up the drive and round and down the other side – the sole condition being that Ella was not in the front garden at the time.

[Mervyn Knowles, *Canberra Historical Journal*, March 1987.]

Sir Robert Garran was as keen a gardener as any. Engaged in the usual Monday morning task of obtaining Sir Robert's signature on opinions written in the previous week, Martin Boniwell recounted how on one occasion he waited an inordinate amount of time for the Secretary to peruse a particular opinion, wondering what profound question would arise. Sir Robert finally raised his head and asked: 'Boniwell, do you think fowl manure is too strong for asparagus?'

[Story told by Charles Comans at farewell to John Ewens, 16 November 1972.]

In February 1935 *The Canberra Times* reported the conviction of two youths in the Canberra Court of Petty Sessions. Caught late at night stealing fruit from the Boniwell property, the thieves had been detained by members of the family until the police arrived.

From the late 1940s Charles Comans cultivated an extensive orchard at his family home in Tasmania Circle, Forrest. He grew cherries, peaches, nectarines, several apple varieties, plums, grapefruit, almonds, walnuts, strawberries and rhubarb – along with roses and camellias. Excess quantities of fresh fruit were frequently donated to local orphanages and charities such as Koomarri (a local service provider for people with a disability).

National Capital Pioneers

National Capital Pioneers

By the end of 1929 Canberra's pioneering public servants were settled in the Commonwealth offices flanking the eastern and western ends of the provisional Parliament House. The Attorney-General's Department was first located on the second floor of the Second Secretariat Building, on Commonwealth Avenue. Government administration was 'all very compact and convenient'[1] with other occupants of the building including the Prime Minister's Department on the first floor, the Treasury on the ground floor, the National Library and the Governor-General's Official Secretary. Later known as Commonwealth Offices (West Block), the building, like many in early Canberra, was intended to be temporary. Construction of a permanent administrative block begun in 1927 was put on hold during the Great Depression and not resumed until 1947.

Depression Years

Beginning earlier in the Federal Capital Territory than in other parts of Australia, the Depression halted the development of the city. Construction of the new capital was held by some to be partly to blame for the financial crisis which engulfed the nation from the American stock-market crash of October 1929 until 1933. Internal dissent and lack of cohesion beset governments grappling with high level of overseas debt, an unfavourable trade balance, mounting domestic economic problems and industrial unrest. Coming to power in 1929 for the first time in 13 years, a short-lived Labor Government confronted additional challenges of inexperienced Ministers and limited legislative control. A renewed Senate focus on state rights was accompanied by a Western Australian campaign to secede from the Commonwealth. Begun in 1919, the attempt was ultimately rejected by the British House of Commons in 1934. By 1931 one-third of Australian workers were unemployed, many for long periods, and levels of individual debt and bankruptcy escalated. Thousands of farmers faced financial ruin and displacement as primary industries struggled. Public riots protesting increasing poverty broke out in Melbourne and Sydney in 1931.

[1] Speech by former Parliamentary Draftsman and First Parliamentary Counsel John Ewens, at the opening of the George Knowles Building on 10 November 1987. Situated on the corner of Kings Avenue and National Circuit in Barton, the building was later demolished to make way for the offices of the Department of Prime Minister and Cabinet.

Commonwealth Offices (West Block) where the Attorney-General's Department was accommodated after the 1927 move to Canberra. [Photograph Courtesy of the National Library of Australia]

Federal and State governments responded with the Premiers' Plan for the Depression. This reduced government expenditure by 20 per cent, lowered bank interest and increased taxation. A range of financial emergency legislation putting these measures into effect was enacted in 1931 and 1932. Parliamentary and public service salaries, wages and superannuation, allowances, pensions and bounties were all scaled back. Graduated reductions – heavier on the higher salaries, and allowing for certain exceptions and a minimum irreducible wage – were applied and maternity allowances were means tested. Drafters of the legislation needed to take into account cost of living adjustments, used as a basis for determining salaries at the time. Constitutionally guaranteed, judges' remuneration could be diminished only voluntarily, the legislation merely providing that any amounts foregone or returned would not be treated as salary for taxation purposes. One of only two federal judges who refused, without explanation, to volunteer any reduction in his own salary was the Federal Judge in Bankruptcy. Scornful comments on the consequential expense to the Commonwealth of the 'thriving industry' of bankruptcy were made in Parliament in 1932,[2] and the matter was revisited during debate on judges' pensions legislation over two decades later.

[2] Australia, House of Representatives 1932, *Debates* vol. 135, p. 358.

Commonwealth sales tax was introduced during the Depression, with 46 Sales Tax and Sales Tax Assessment Acts passed in 1930 and 1931. These were sub-divided into nine groups to avoid infringing the requirements of section 55 of the Constitution that only one subject of taxation be dealt with in an Act. Different Acts pertained to direct sales to the public from manufacturers, and those made indirectly through other purchasers or importers. Exemptions were designed to avoid increasing the costs of food or exports, or unduly penalising goods already subject to heavy excise duty.[3] Drafting complexity was increased by the need to establish and specify levels of liability for the tax.

Commonwealth Avenue and Bridge, across the Molonglo River. View from West Block, where the drafters were accommodated, circa 1930. [Photograph courtesy of the National Library of Australia]

Among the 195 Acts passed by the thirteenth Parliament between 1932 and 1934 were numerous financial measures and minor amendments to existing legislation. Various financial relief acts were passed to reduce some aspects of taxation and to provide funds for the states to subsidise primary producers affected by the Depression. New laws drafted in this period included the *Seat of Government Supreme Court Act 1933* which established a Supreme Court in the Federal Capital Territory. A statutory corporation to provide an Australia-wide radio broadcasting service was created under the *Australian Broadcasting Commission Act 1932*.

[3] G Sawer, *Australian Federal Politics and Law 1929-1949*, Melbourne University Press, 1974, p. 11.

Sir Robert Garran handing over to George Knowles, who succeeded him as Secretary to the Attorney-General's Department, Solicitor-General and Parliamentary Draftsman in February 1932. [Attorney-General's Department Photograph]

The Knowles Era

On 9 February 1932 Sir Robert Garran retired from the public service. He was succeeded as Solicitor-General, Secretary to the Attorney-General's Department and Parliamentary Draftsman by George Knowles. As Garran's lieutenant since 1913, Knowles had been largely responsible for the 'organization and discipline of the Department'.[4] Still a small agency, the Attorney-General's Department comprised 28 staff in its central office, with two more working in the Senate. Of these, 12 (including the Secretary to Representatives of the Government in the Senate) were legal professionals. The Crown Solicitor's Office had 10 positions in Canberra, 25 in Sydney and 20 in Melbourne.

Drafting was not a discrete function. In August 1933 John Ewens, previously in private practice in Adelaide, was appointed as a Legal Assistant (£384-456) in the final vacancy consequent upon Garran's retirement. Ewens later reflected:

> *In those days there were only 12 of us; the office was not divided into divisions as it is today. Everybody had a shot at every sort of work: you'd be drafting a Bill in the morning and writing an opinion in the afternoon, and the following morning writing a Cabinet submission recommending some amendment of the Trade Marks Act or some such thing, and in the afternoon doing some other formal legal work. But literally from the day I arrived I was drafting Bills, as well as beginning to write some opinions.*[5]

In 1932 the Law Book Company published a four-volume collection of Commonwealth laws from 1901-1931. Comprehensively indexed, and annotated with reference to court decisions and statutory rules, the compilation was the first since the consolidation of Commonwealth Acts prepared by George Knowles in 1913. The *Statute Law Revision Act 1934* was the first of its kind. It renamed some Acts, repealed obsolete laws, removed unnecessary words and phrases from existing legislation, and cleared the way for a general reprint of Commonwealth statutes. This was prepared by the Attorney-General's Department and published in 1936, reflecting the law as at 1 January that year.

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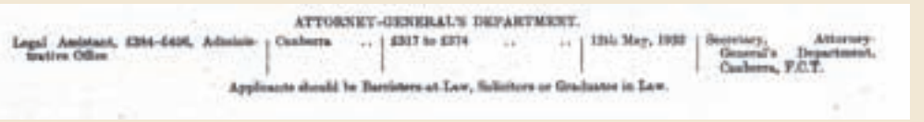
[4] RR Garran, *Prosper the Commonwealth*, p. 152.
[5] John Ewens at his farewell, 16 November 1972.

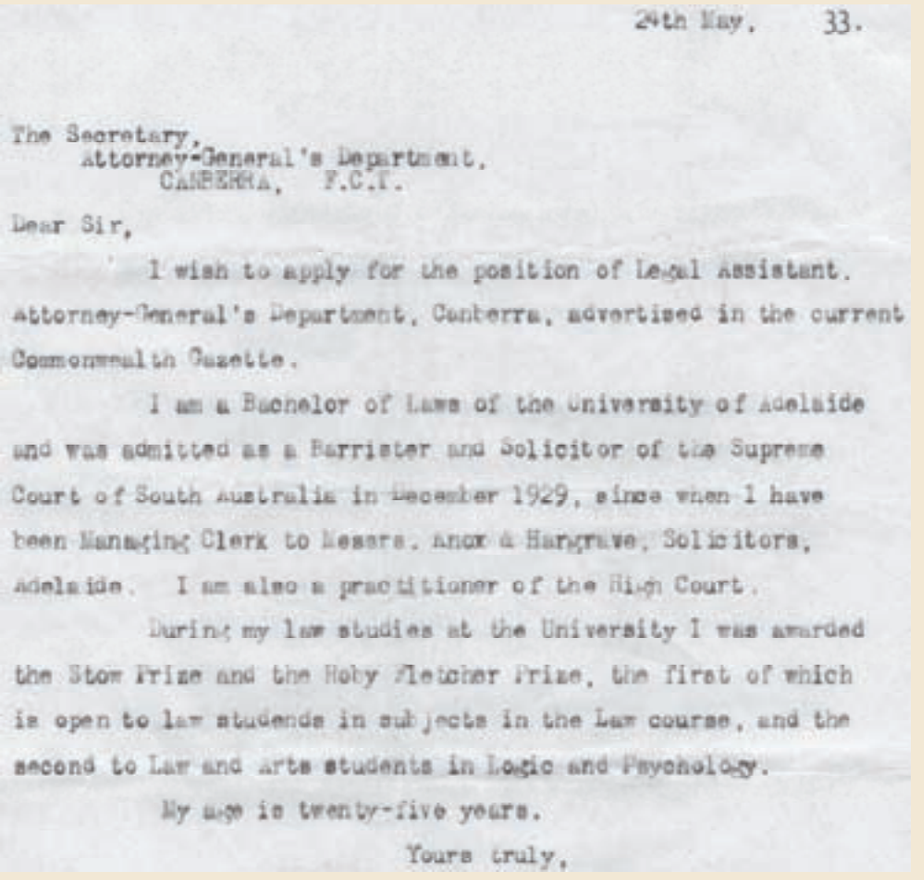
Applying for Work



ATTORNEY-GENERAL'S DEPARTMENT.

Legal Assistant, £264-£408, Administrative Office	Canberra ..	£317 to £374	12th May, 1933	Secretary, Attorney-General's Department, Canberra, F.C.T.

Applicants should be Barristers-at-Law, Solicitors or Graduates in Law.



24th May, 33.

The Secretary,
Attorney-General's Department,
CANBERRA, F.C.T.

Dear Sir,

I wish to apply for the position of Legal Assistant, Attorney-General's Department, Canberra, advertised in the current Commonwealth Gazette.

I am a Bachelor of Laws of the University of Adelaide and was admitted as a Barrister and Solicitor of the Supreme Court of South Australia in December 1929, since when I have been Managing Clerk to Messrs. Anox & Hargrave, Solicitors, Adelaide. I am also a practitioner of the High Court.

During my law studies at the University I was awarded the Stow Prize and the Hoby Fletcher Prize, the first of which is open to law students in subjects in the Law course, and the second to Law and Arts students in Logic and Psychology.

My age is twenty-five years.

Yours truly,

Preparing a job application in the early decades was a comparatively simple task. In 1933, after losing his job at a law firm in Adelaide during the Depression, and competing in a field of around 70 applicants, John Ewens won a junior legal position in the Attorney-General's Department with a one-page application. With his meticulous eye for detail, Ewens probably had the typographical error in the third paragraph of this carbon copy corrected before the letter was sent.

Job hunting was no less competitive, and certainly more complicated, in 1994 when Michelle Fletcher successfully attracted the attention of a selection committee by presenting her application to OPC in the form of a draft Bill. Almost two decades earlier Hilary Penfold had caused some mirth in the upper echelons of the Attorney-General's Department by beginning her application, addressed to the Secretary, with the salutation 'Dear Sir/Madam'. While Hilary herself was appointed First Parliamentary Counsel in 1993, the Department did not have a female Secretary in the first 110 years of its existence.

Public service recruitment and employment were severely affected by the Depression years. Examination entry to the service was suspended by 1930 and excess officers transferred where possible to avoid laying off permanent staff. Youth recruitment ceased for a lengthy period and, until 1936, some staff remained in junior positions even after achieving adult status at age 21. Already small salaries were cut even further, imposing particular hardship on officers already coping with the expensive cost of living in Canberra. Reprieve from stringent financial emergency legislation was provided gradually with salaries restored in stages from the *Financial Relief Act 1933* to those of 1936.

A new scheme to rejuvenate the lower levels of the service was implemented under the *Commonwealth Public Service Act 1933*. Section 36A of the Act provided for university graduates, without the customary entrance examination, to be appointed as base-grade clerks. Restricted to less than 10 per cent of the base-grade intake in any year, the first graduate positions were advertised in the Commonwealth *Gazette* and the daily press early in 1934. Despite their low salary range of only £96 to £306 per year, the positions attracted considerable interest in an employment climate where a university degree could be of questionable practical value. Highly qualified, and with prior experience in private practice, Charles Comans accepted the unattractive offer and a move to Canberra to secure a position in the Commonwealth public service when he joined the Taxation Branch of the Treasury in 1936. Abandoning plans to return to Melbourne he transferred to the Attorney-General's Department, and to drafting, in 1938.

Wedlocked

Presenting a paper at the 1935 Australian Legal Convention, Sir Robert Garran commented on the pitfalls of taking shortcuts in drafting, such as creating a divorce law for the Federal Capital Territory by applying the law of New South Wales.

> *... for a long time the inhabitants of the Territory were deprived of all opportunity of getting unmarried. True, the general adoption of New South Wales laws "as if the Territory continued to form part of New South Wales" included the Divorce Acts; but there was a little difficulty. The New South Wales laws required domicil in New South Wales as the basis of jurisdiction; and domicil in the Territory is not domicil in New South Wales. It was not till 1932 that a Matrimonial Causes Ordinance was passed, applying the New South Wales law with the modification that "domicil" was to be read in reference to the Territory.*

['The Law of the Territories of the Commonwealth'. *Australian Law Journal* Volume 9: Supplement 15 November 1935 p. 35.]

Quest for Uniformity

Substantial changes to income tax legislation eventuated from a Royal Commission appointed in 1932. The 'Ferguson Commission' was set up to inquire into simplification and standardisation of Commonwealth and State tax laws. From 1915 when the Commonwealth first exercised its constitutional, but non-exclusive, income taxing power this legislation had become increasingly voluminous and complex. Taxpayers were required to file separate returns for federal and state income taxes which varied greatly. Public servants who moved to Canberra after 1927 paid negligible federal income tax, while those in the States paid different rates on the same salaries.

Moves to harmonise taxes and their administration had been made through various Commonwealth–State agreements. The *Income Tax Collection Act 1923* authorised the transfer of relevant Commonwealth staff to the States to administer the collection of Commonwealth tax. Western Australia was the exception – under a separate agreement in force from 1921 income tax was collected by the Commonwealth on behalf of the State. A uniform system to deal with applications by states for federal financial aid was introduced following passage of the *Commonwealth Grants Commission Act 1933.* Implementing the Ferguson Commission's recommendation that uniform income tax legislation and administration also be adopted, the *Income Tax Assessment Act 1936* made numerous changes and consolidated the existing law. Uniformity was short-lived, with subsequent amendments reintroducing differences between Commonwealth and

State tax laws. By the time the inaugural Australian Legal Convention[6] was held in late 1935, tax laws especially were attracting some public pleas for greater simplicity.

Attempts to secure uniformity in legislation encountered disparate State responses. During prolonged negotiations over the first Commonwealth bankruptcy laws, drafters endeavouring to combine various schemes for administering alternatives to bankruptcy into a single effective system ultimately had been ordered to humour the States. Three different schemes – deeds of arrangement, deeds of assignment and compositions – were included in Parts XI and XII of the *Bankruptcy Act 1924*. Reflecting on this concession during the Australian Legal Convention in 1935, former Attorney-General Sir John Latham explained: 'Our friends in South Australia absolutely insisted upon maintaining the system under which they had been born, and had lived. The other States were equally wedded to their views. The Act had to be put through on a basis of general consent, or it would not have gone through at all.'[7] Hopes that the dual provisions would not survive beyond the settling in period for the legislation were in vain. Compromise again prevailed when bankruptcy laws were reviewed decades later, with all three schemes provided for under Part X of the new Act passed in 1966. It was not until 'personal insolvency agreements' were introduced in amendments which came into effect in December 2004 that 80 years of compromise concerning arrangements outside bankruptcy came to an end.

Commenting on another area where securing a national approach would prove to be especially elusive, Latham opined:

> *... it is very difficult to obtain uniformity. Take company law, where most obviously there might be uniformity – even there and quite naturally each Parliament has its own ideas. Recently at Canberra there was drafted, as a basis for the consideration of all the State Parliaments, what one might describe as a model draft company statute. It was circulated to all the States, some of which are legislating in accordance with it, but of course every Parliament wants to have its own little way here and there, and sometimes it becomes almost everywhere. ... The difficulties are sometimes political, and sometimes legal in their character.*[8]

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[6] The conference in 1935 was the first actually called 'the Australian Legal Convention'. Twenty-one delegates attended the first gathering of lawyers from all the States, held in Sydney in 1933. This 'First Conference of the Legal Societies of Australia' led to the formation of the Law Council of Australia. D Williams, 'Law and the Government 'Past, Present, & The Future'', address to the 31st Australian Legal Convention, 10 October, 1999.
[7] *Australian Law Journal*, vol. 9: supplement, 15 November 1935, p. 96.
[8] ibid, p. 95.

A Valuable Resource

Presenting his paper, 'A Plea for Simplicity in Statute Law', at the 1935 Australian Legal Convention George Ligertwood KC, President of the Law Society of South Australia, emphasised the value of a skilled and experienced drafter in addressing issues of obscurity and complexity in legislation:

> *Where is there room for simplicity? The inherent complexities cannot be altered. They are due to the very nature of modern civilisation. ... Nor have we much hope of altering the defects of our Parliamentary law making machine. The delights of second reading debates and the quick exchanges in committee are too dear to the hearts of Parliamentarians to be lightly scrapped. Our legislation will continue to be a matter of compromise and will continue to suffer from the vagueness and inconsistencies attending all compromises. But there are some ways in which matters might be improved. The first is to emphasise the importance and status of the Parliamentary Draughtsman. The form of our Statute law has vastly improved since the creation of this office. It would seem that the qualities which make a good draughtsman are a result largely of experience. He should, of course, have a sound knowledge of common law and of equity, but an academic training is probably sufficient. It goes without saying that he should be cultured in the English language and should possess the power of lucid expression. Most important is a profound knowledge of Statute Law as it exists at present and of its practical working in the community. As a class, lawyers do not become familiar with Statute law. Most of them consult it in patches as the exigencies of their practice require. But the Parliamentary Draughtsman has an unique opportunity of becoming acquainted with the whole body of our legislation. It must be a painful process, and it must take a long time. It ought to be adequately remunerated. ... The office should not be a mere stepping stone to promotion. It should be of sufficient status and should command sufficient salary to encourage an experienced official to stay in it as his life career.*

President of the Convention, Chief Justice of the High Court and former Attorney-General Sir John Latham noted in reply:

> *Some years ago I procured the appointment of a special Parliamentary Draftsman to work specially on the Taxation Acts. The Public Service Board had its own idea of the value of his services, but we obtained a very good man. I agree entirely with Mr Ligertwood's advice to pay your Parliamentary Draftsman well – very well indeed. A few thousands of pounds spent that way may save hundreds of thousands of pounds to the community. As soon as we appointed this additional officer he was seized at a higher salary by one of the States.*

[*Australian Law Journal* Volume 9: Supplement. 15 November 1935. Proceedings of the first Australian Legal Convention, held in Melbourne from 30 October to 1 November 1935 p. 80 and p. 96 . The purloined drafter remained unidentified.]

Sir John Latham served two terms as Attorney-General: from 18 December 1925 to 22 October 1929; and from 6 January 1932 to 12 October 1934. Appointed Chief Justice of the High Court on 11 October 1935, he presided at the first Australian Legal Convention, held in Melbourne from 30 October to 1 November that year.

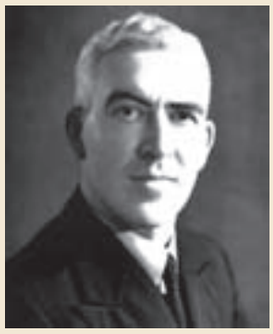
[Photograph courtesy of Auspic]

A National University

Several parliamentary drafters made significant contributions to the foundation and development of a national university in Canberra. In 1926 a committee of distinguished academics recommended the establishment of a university, but no necessary government funding was provided before the government move from Melbourne. Similar inaction followed the report of a second committee, chaired by Sir Robert Garran, which in 1927 not only supported setting up a teaching university in Arts and Commerce but outlined its organisational and financial requirements. George Knowles was the convenor of a public meeting held in the Albert Hall on 13 December 1928 and became the first Secretary of the University Association formed as a result of that and a further meeting on 17 January 1929. The Association worked to promote the establishment of a university in Canberra; organised classes, examinations and extension lectures; and generally facilitated university study for local residents.

In December 1929, the Canberra University College Ordinance created a University College – pending the establishment of a teaching university – and provided for its government by a council. Sir Robert Garran was Chairman of the Council of the Canberra University College appointed in January 1930. George Knowles represented the University Association on the Council for 16 years and procured the services of drafter Les Lyons as the first Secretary to the Council, and administrative officer of the College, from 1930 to 1934. Lyons was Secretary to the Representatives of the Government in the Senate from 1932. When he resigned from the Council for work and personal reasons in March 1934 John Ewens was appointed as his successor. Ewens held the position until the end of 1937 when the role became too large to be filled on a voluntary basis, and a full-time secretary was appointed. That same year Ewens had lectured in Patent Law, the largest class at the College. Many meetings of the Council

were held in the Attorney-General's office in West Block.[9] Delayed by the economic crises of the 1930s and subsequent war, the university was eventually founded under the *Australian National University Act 1946*. Charles Comans, who lectured at the College and served on the committee of the public administration study group formed by the University Association in November 1939, drafted the Bill. The ANU operated as a post-graduate research institution before its amalgamation with the undergraduate teaching body, the University College, in 1960.



Bill Fanning joined the public service in Melbourne in 1917, transferring to the Attorney-General's Department in 1926, the year before it moved to Canberra. He worked as a drafter from 1933 to 1966, retiring as Senior Assistant Parliamentary Draftsman. Among other things, he was involved in the drafting of significant national health and defence legislation.

[Photograph courtesy of Pauline Fanning, née Dixon]

When the Canberra University College began operating in 1930 lectures were held at Telopea Park School. From 1931 until May 1935 the College had the use of rooms at the Australian Institute of Anatomy in Acton. Lectures delivered by highly qualified residents of the Federal Capital Territory (including Attorney-General's Department legal staff and some professors at the Australian Military College at Duntroon) were held after office hours. Classes in fourteen subjects in the faculties of Arts, Science, Commerce and Law were provided initially. The Council was prepared to arrange lectures even if only one student enrolled in a course. Degrees were awarded in cooperation with the University of Melbourne which approved course content, vetted teaching appointments and set and marked examinations, held in Canberra concurrently with those in Melbourne. One of the earliest graduates under this system was Bill Fanning. He completed studies at the Canberra University College for his Bachelor of Laws in 1932 and Bachelor of Arts in 1934.[10] Transferred to the Attorney-General's Department from the Department of the Navy in an administrative role in 1926, Fanning was appointed as a Legal Assistant in 1933. He later became Senior Assistant Parliamentary Draftsman, retiring from this position in 1966.

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[9] L Lyons, 'A Secretary looks back: The Canberra University College 1930-1934', *Canberra Historical Journal*, March 1976, pp. 3-15.
[10] Ibid.

A Lucky Rub

Sir Robert Garran's influence on Canberra was commemorated in various ways. The suburb of Garran was named after him, as were the Robert Garran Offices, housing the Attorney-General's Department after 1983. The Institute of Public Administration Australia (IPAA) established an annual oration in his honour, the first of which was delivered by former Commonwealth Crown Solicitor Fred Whitlam in 1959. At the Australian National University (ANU), Garran's name was bestowed on a road, a hall of residence and a Chair of Law. Professor Les Zines, who held the Robert Garran Chair of Law for 15 years, told a story about the ongoing connection between ANU law students and the recipient of the first degree conferred by the University:

> *I should say that the modern generation of students probably don't know much about Garran, but in Canberra law students have some connection with him. On the stairs in the Law Library, there is a rather fine sculptured head of Garran and it has a very shiny nose. The reason is there has to my knowledge for the last 40 odd years been a superstition among ANU law students that particularly around exam time it is very lucky to rub the nose of Robert Garran going down the stairs. Indeed on one occasion, I suppose about five years ago it could have been, I was coming down the steps and a student had run down the steps, stopped suddenly, quickly went back again, rubbed the nose and then proceeded, presumably into his examination room.*
>
> [Former Attorney-General's Department officer and Emeritus Professor at ANU, Leslie Zines. Department of the Senate Occasional Lecture Series, Parliament House, 9 September 2005]

Subordinate Legislation

Parliamentary processes for scrutinising subordinate legislation became more sophisticated in the 1930s. In December 1929 a select committee of seven Senators was appointed to consider and report on whether a standing committee system might be adapted to the procedure of the Senate to deal with, among other things, statutory rules and ordinances. Subject under the *Acts Interpretation Act 1904* to specific parliamentary processes and time frames, regulations, rules and ordinances were generally made by the Governor-General to give effect to principles laid down by statute. Swelling numbers of federal laws brought a commensurate increase in this subordinate legislation being submitted to Parliament. Confronted with pages of regulations more than triple those of statute law by 1927, parliamentarians found it impossible to examine them all in detail. Occasional serious differences of opinion between the House of Representatives and the Senate – either of which could repeal subordinate legislation – about the desirability of certain regulations emphasised the need for some systematic review. After inquiries held in Sydney and Melbourne, and studying legislative practice in other countries, the select committee reported on 9 April

1930 recommending the establishment of a standing committee. Once disagreements over the methods proposed for selecting committee members were resolved, the Senate agreed to a second report and on 11 March 1932 adopted Standing Order 36A,[11] leading to the creation of the first Senate Standing Committee on Regulations and Ordinances a week later. Members of the Committee were to be appointed at the beginning of each parliamentary session.

Skeleton Acts

As federal legislation increased, so did regulations. While Sir Robert Garran assured the select committee considering the need for a standing committee on regulations and ordinances in 1930 that there was no increasing tendency to omit principles from an Act and leave them to regulations, he did explain the purpose of a 'skeleton Act' such as the *Wireless Telegraphy Act 1905-1919*.

> *... the subject was a new one. The science was progressing daily, and it was impossible to lay down satisfactorily a detailed code of legislation on the subject. It was thought better to leave it to be developed by regulation as circumstances might dictate.*

A similar approach to Air Force legislation led to criticisms that the Air Force was controlled by regulation while the naval and military branches of the defence forces were governed by statute.

[Select Committee of the Senate Report (on the advisability of establishing Senate standing committees) 1930.]

Standing Order 36A did not restrict the Standing Committee's power of inquiry or formally endorse the work procedures outlined in the select committee report. In the absence of specific directions, the Committee adopted four operating principles from the beginning. Scrutiny was to ensure that regulations and ordinances were in accordance with the statute; did not trespass unduly on personal rights and liberties; did not unduly make these rights and liberties dependent on administrative and not on judicial decisions; and that each was concerned with administrative detail and did not amount to substantive legislation which should be a matter for parliamentary enactment.[12] The Committee was not set up as a critic of the government policy behind regulations. Without executive power itself, it could issue an unfavourable report which might result in action to disallow an offending regulation or ordinance. Government departments responsible for new or amended subordinate legislation were asked to

[11] Renumbered as Standing Order 23 in a 1989 revision.
[12] Later contained in paragraph (3) of Senate Standing Order 23.

supply explanations of its effect. The Committee also instigated a numbering system for regulations, and the compilation of regular consolidations.

Asked during the Senate inquiry in 1930 whether it would be possible to have a draftsman as secretary to the proposed Standing Committee, Sir Robert Garran tactfully suggested that it may be preferable to engage an officer under the direct control of the Senate.[13] Drafters' duties in relation to subordinate legislation increased markedly later in the decade. Most regulations at this time were drafted within the relevant department, without necessarily being checked by an expert parliamentary drafter. In the *Broadcasting Case* in 1935[14] the High Court held certain regulations invalid, in that they were not authorised by statute. Parliament subsequently found the regulations had been made on the advice of the Minister and the Executive Council, without involving the Government's legal advisers.

An amendment moved by the Chairman of the Regulations and Ordinances Committee, Senator John Duncan-Hughes, during debate on the Acts Interpretation Bill in September 1936 provoked a battle of wills between the chambers of the Parliament. Designed to require certification by the Solicitor-General, Parliamentary Draftsman or some responsible legal officer that draft regulations were within the scope of the relevant regulation-making power, the amendment was opposed by Senator Thomas Brennan, the Minister Assisting the Attorney-General, on the grounds that its effect was by then being achieved under existing law.

Initially passed by a substantial majority in the Senate, the amendment was rejected in the House of Representatives where Attorney-General Menzies was concerned that the requirement for certification would impose undue onus on his Department. The Bill was returned to the Senate in December, with an assurance from Menzies that departments were being directed to submit all draft regulations for the consideration of the Attorney-General's Department, which would be in a position to examine them promptly early in the new year. Insisting on the amendment, the Senate reinserted it by a majority of one vote before the Bill lapsed on prorogation, and a new version was introduced in June 1937. Passed unamended by the House, the new Bill elicited some angst that the Government was deliberately flouting the expressed will of the Senate. Once again arguing that a formal amendment was unnecessary, Senator Brennan declared that a regulation's validity would not be enhanced by affirmation that it had been examined by legal authorities, saying that only the courts would determine if it was *ultra vires*. A drawn vote meant the amendment was ultimately negatived in the

[13] Select Committee of the Senate, report on the advisability of establishing Senate standing committees, Minutes of Evidence, 4 February 1930, pp. 33-37.
[14] *R v Brislan* [1935] HCA 78; (1935) 54 CLR 262.

Senate, and the *Acts Interpretation Act 1937* was passed. The undertaking that the Attorney-General's Department would examine subordinate legislation before promulgation significantly increased the drafters' workload, contributing to substantial backlogs in subsequent decades.

Some of the staff of the Attorney-General's Department Administrative and Crown Solicitor's Offices, West Block, Canberra mid-1936. From left:

1ST ROW: MC Boniwell, GS Knowles, WH Sharwood, JGB Castieau

2ND ROW: NF Gamble, PGM Gilbert, Miss SW Clarke, Miss M Hicks, Miss M Franklin, Miss HM Dunn, Miss IW Clemens, Miss A Fogarty, Miss MG Cox, T O'Callaghan, MR Tryde

3RD ROW: R Durie, WJ Bradby, LD Lyons, AA Cameron, JQ Ewens, LGR Thornber, KS Letton, HFE Whitlam, JF Gamble

4TH ROW: B Bellhouse, JFE Sharpe, unidentified, TL Legg, IM Reid, PJ Tipping, RG Sharp, AJH Wade, AD Forbes, VL Rushton, KC Waugh.

[Attorney-General's Department photograph]

Australian Capital Territory

After the *Seat of Government (Administration) Act 1930* abolished the Capital Territory Commission set up in 1924, the Federal Capital Territory came under direct ministerial control. The Territory was renamed by amendment to the *Seat of Government Acceptance Act 1909* and the Australian Capital Territory came into being on 29 July 1938. That year, reclassification of offices in the Attorney-General's Department replaced 'clerk' and 'legal assistant' designations with a new range of 'Legal Officer' positions.

No. 29.—30th June, 1938 1859

OFFICES ABOLISHED, CREATED, ETC.

ATTORNEY-GENERAL'S DEPARTMENT.

ADMINISTRATIVE OFFICE, CANBERRA.

Office Reclassified.—The classification of the office of Second Assistant Secretary and Second Assistant Parliamentary Draftsman, Second Division, occupied by J. G. R. Cantieni, is raised from limits of salary of minimum £955 and maximum £1,100 to limits of salary of minimum £1,050 and maximum £1,200 subject to variation in pursuance of Regulation 106A.

Offices Abolished.—The under-mentioned Third Division offices are abolished:—Chief Clerk and Assistant Parliamentary Draftsman (£852-£950), occupied by J. F. Gamble; Principal Legal Assistant (£636-£708), occupied by P. J. Tipping; Legal Assistant (£510-£582), occupied by L. G. E. Thornber; Legal Assistant (£474-£546), occupied by T. L. Legg; Legal Assistant (£474-£546), occupied by H. L. Sanders; Legal Assistant (£438-£510), occupied by V. L. Risdon; Legal Assistant (£402-£474), occupied by W. D. Fanning; Legal Assistant (£402-£474), occupied by J. Q. Keane; Secretary to Representatives of Government in the Senate (£510-£582), occupied by L. D. Lyons.

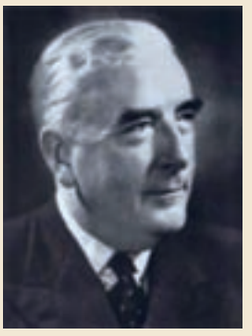
Offices Created.—The under-mentioned new offices have been created in the Third Division with limits of salary as indicated, subject to variation in pursuance of Regulation 106A:—One of Principal Legal Officer, minimum £876 and maximum £1,000; one of Senior Legal Officer, minimum £684 and maximum £756; one of Senior Legal Officer, minimum £636 and maximum £708; one of Secretary to Representatives of Government in the Senate, minimum £546 and maximum £618; two of Legal Officer, Grade 3, minimum £546 and maximum £618; one of Legal Officer, Grade 2, minimum £474 and maximum £546; two of Legal Officer, Grade 1, minimum £120 and maximum £510.

Extract from Commonwealth *Gazette*, showing the reclassification of positions occupied by drafters in June 1938.

Frequent reports about participation by parliamentary drafters and various of their family members in local community, social and sporting events appeared in *The Canberra Times*. Canberra was essentially a country town, with a population of around 10 000 and suffering from a chronic shortage of housing. Most government administration still operated from Melbourne. Billets in Canberra and Queanbeyan homes, boarding schools and tents were put to use when local hotels proved unable to accommodate the hundreds of scientists who came to the twenty-fourth meeting of the Australian and New Zealand Association for the Advancement of Science (ANZAAS) from 11 to 18 January 1939. After an exceptionally dry period the region was in the grip of a heatwave. Huge bushfires burned across southern Australia, devastating much of Victoria on 'Black Friday' 13 January 1939. Participants at the ANZAAS conference helped to fight fires in Canberra suburbs, and those in the Brindabella Ranges which also threatened the Commonwealth Solar Observatory, established at Mount Stromlo in 1924.

Second World War

Newspaper headlines in 1939 evidenced upheaval on a wider scale. Prime Minister Joseph Lyons died in office on 7 April 1939. Five months later, on 3 September 1939 his successor, Robert Menzies, announced that Australia had joined Britain in declaring war on Germany. War on Italy was declared in 1940. More conscious of the need to preserve essential services and to minimise internal conflict than it had been in 1915, Parliament avoided the heated conscription debates of the First World War. Legislation reflected a more orderly but nonetheless urgent preoccupation with defence. Some Bills and Statutory Rules were speedily enacted, having been drafted in advance in bipartisan consensus about the need to prepare for such a crisis. Three Supply and Development Acts in 1939 established a department to provide for the procurement and manufacture of war equipment. The *National Registration Act 1939* authorised a census of males aged between 18 and 65, and a census of property, to provide a basis for mobilisation on the outbreak of war. A register of 'enemy aliens' was re-established under the *Aliens Registration Act 1939*, while the *Trading With The Enemy Act 1939* made it an offence to have business dealings with enemy subjects. A precursor to later proceeds of crime laws, the latter Act enabled appointment of controllers for businesses found to be under enemy control or influence, or with management prejudiced by war conditions. The Treasurer sought a 'drastic reduction in the Estimates' due to the war effort, and all departments were expected to achieve economies. Building of offices and housing in Canberra, preparatory to further transfers of public servants, slowed yet again.



Australia's longest serving Prime Minister, Sir Robert Menzies was previously Attorney-General, from 12 October 1934 to 20 March 1939.

[Photograph courtesy of Auspic]

Most drafting effort during the war years concentrated on the multi-faceted task of preparing national security legislation. Under National Security Acts in 1939 and 1940, similar to the War Precautions Acts of the First World War, the Commonwealth government gained extensive powers over civil liberties and commerce. Much of the law governing the war effort and the home front was made in the form of regulations. These introduced emergency measures controlling resources, transport and labour and

diverting civilian resources to the war effort. Fuel and various commodities such as rubber were rationed, and building and renovation costs restricted. Personal identity cards were issued. Arrangements were made for the recruitment of volunteers. Strikers were able to be drafted into the Army or the Army Labour Corps.

Conscription for military service beyond Australia and its territories was initially prohibited – grounds for exemption on the basis of 'conscientious objection' were extended under the *Defence Act (No.2) 1939*. From mid-1942 all men aged 18 to 35, and single men aged 35 to 45, were required to join the Citizen Military Forces. War zones to which conscripted troops could be sent were expanded under the *Defence (Citizen Military Forces) Act 1943*. A Women's Land Army was formed, and increasing numbers of women enlisted into auxiliary forces. Holiday periods were reduced, sporting events restricted, daylight saving introduced and blackouts and brownouts imposed in cities and coastal areas. National Security Regulations in June 1940 provided for the dissolution of associations which opposed the conduct of the war, including the Communist Party of Australia and the right-wing Australia First Movement.

Financial legislation was increasingly centralised during the Second World War. Under wartime defence powers, the Commonwealth took control of an expanded range of monetary measures, and the impact was lasting. A supplementary budget was introduced, industries regulated, prices and wages controlled and production of essential war materials subsidised.

Taxation law evolved radically. A uniform tax scheme was first introduced to provide the money the Commonwealth Government needed to conduct the war. The *Income Tax (War-Time Arrangements) Act 1942* provided for the Commonwealth to take over the State employees who had been administering Commonwealth income tax collection since 30 June 1923. The *Income Tax Assessment Act 1942* gave the Commonwealth precedence in the collection of income tax, and imposed uniform tax rates at a higher level than the previous rates for combined Commonwealth and State taxes. Commonwealth-State financial relations were significantly altered by the combined effects of a series of tax laws with State Grants (Reimbursement) Acts passed in the same period. Annual amounts equating to those previously collected through State schemes were paid by the Commonwealth to the States, on condition that they would no longer impose income or entertainment taxes. Initially intended to apply only until six months after the war ended, the uniform Commonwealth system was upheld by the High Court in the *Uniform Tax Case* in 1942[15]. The decision in a later High Court

[15] *South Australia v Commonwealth* [1942] HCA 14; (1942) 65 CLR 373.

challenge, the *Second Uniform Tax Case* in 1957[16] confirmed the Commonwealth's constitutional power over taxation.

Death of a Drafter

Laurence George Roland (Laurie) Thornber was born in Moonta, South Australia on 11 April 1900. Entering the Commonwealth public service in Western Australia as a telegraph messenger at age 14, he also joined the military Cadets. With his parents' permission, he enlisted in the Australian Imperial Force soon after his eighteenth birthday, undergoing training in Western Australia before the First World War ended six months later. In 1927, based on his experience as a telegraphist in the North-West, he represented the Commonwealth Public Service Association in an arbitration plaint concerning 'disabilities' suffered by public servants working in tropical and outback districts. By then married with two small daughters, Laurie began studying at the University of Western Australia in 1928, graduating with a Bachelor of Laws in 1932. He moved to Canberra to work in the Attorney-General's Department that year. Studying legal history with special reference to constitutional development, he qualified for a Master of Laws in 1935 – becoming the second student at the University of Western Australia to achieve that distinction.

An enthusiastic contributor to the community, Laurie lectured in legal subjects at the Canberra University College, served as President of the Legal Professional Officers' Association, was honorary legal adviser to the Canberra Australian National Football League and was a long-term committee member of the Federal Capital Territory Cricket Association. He was described as a 'promising longmarker' by *The Canberra Times* soon after he took up golf in early 1940. Advancing rapidly in the Department, he was acting Second Assistant Secretary and was the primary drafter of taxation legislation when he became ill in June 1942. After undergoing several surgical operations, Laurie Thornber died in a private hospital in Darlinghurst, Sydney, on 2 March 1943 at the age of 42 years.

[National Archives of Australia records; and National Library of Australia, 'Trove' digitised newspapers, various entries]

Pay-As-You-Earn (PAYE) taxation, introducing the system of deducting tax in the current year rather than for the previous one, was implemented under the *Income Tax Assessment Act 1944*. Numerous other financial measures drafted in the 1940s included those dealing with the assessment of company and payroll taxes and gift duty. The *National Welfare Fund Act 1943* established a fund, sourced from income tax, from which to make payments for a range of social services. Major changes to the Commonwealth Bank were implemented by the *Commonwealth Bank Act 1945*. The Bank was mandated to carry on general banking business in addition to its central bank role. Its corporate governance and internal structure were substantially reorganised.

[16] *Victoria v Commonwealth* [1957] HCA 54; (1957) 99 CLR 575 at 614, 625-626, 661-662.

Employment conditions comparable to those in the Public Service were instituted to provide a career service for Commonwealth Bank officers. Similar principles applied under the *Australian Broadcasting Act 1946* established a career service within the Australian Broadcasting Commission.

Wartime in Canberra

Defence headquarters remained in Melbourne – the War Cabinet met in Canberra when Parliament was sitting. Air travel to Canberra was available by then, regular services to Sydney and Melbourne began operating in 1936. Suitable sites for airfields had been assessed since 1912 and there was some lobbying for an air commuter service to coincide with Parliament's move to the new capital in 1926. The Northbourne Aviation Ground, in the vicinity of Majura Avenue and Cowper and Antill Streets, operated from March 1924. Identified by white mounds at the corners and equipped with a windsock it was used infrequently. Mainly serving as an emergency airstrip for an Adelaide to Sydney service it was still available to the lease-holding pastoralist for grazing purposes, at a reduced rental. More permanent arrangements were made for an aerodrome near the Duntroon Military College, at the junction of Majura Lane and Queanbeyan and Gundaroo Roads. The full strength of the Royal Australian Air Force (RAAF) assembled in Canberra to prepare for its first mass flying display at the opening of Parliament House in May 1927 – an historic event marred by the death of an RAAF Flight Lieutenant when his aircraft crashed.[17] Two famous aviators visited Canberra the following year. Bert Hinkler landed at York Park in March. His welcome at Parliament House was followed by a civic reception. Charles Kingsford-Smith landed his 'Southern Cross' at Canberra Aerodrome on 15 June 1928.

Air access to the capital was improved during the War. A military airbase, RAAF Station Canberra, was established next to the aerodrome on 1 April 1940. Six months later administration of the civil airport, which had been under the control of the Department of Home Affairs from September 1931, was put on a joint user basis. On 13 August 1940 an RAAF Lockheed Hudson bomber carrying members of the War Cabinet from Melbourne stalled on approach to Canberra and crashed into a small hill. Four crew and six passengers were killed – including the Chief of the General Staff and his Staff Officer; the Vice-President of the Executive Council; and the Minister for the Army and Repatriation. Canberra's airport was subsequently renamed in honour of James Fairbairn, who also died in the crash. Minister for Air and Civil Aviation he was an enthusiastic advocate of aviation in Australia and an accomplished pilot who had served with the Royal Flying Corps during the First World War. The impact of the disaster on

[17] Flight Lieutenant FC Ewen was buried at St. John's Church with full military honours on 11 May 1927.

the war effort was exacerbated by a looming election, and a caretaker Cabinet was put in place until the end of September 1940.

During this period, 10 of the Australian fighter pilots who were engaged with the Royal Air Force in fierce aerial fighting in the Battle of Britain died contributing to the victory which elicited British Prime Minister Winston's Churchill's famous words: 'Never before in the field of human conflict has so much been owed by so many to so few.' Both the Battle of Britain and 'the Canberra Air Disaster' were commemorated at the Australian War Memorial which was officially opened in Canberra on 11 November 1941. Established under the *Australian War Memorial Act 1925*, the Memorial exhibited collections in Melbourne and then Sydney while awaiting construction of its permanent home.

With national security legislation being promulgated daily, drafting was not the only legal work which increased significantly in the Attorney-General's Department. George Knowles, who was Solicitor-General as well as Parliamentary Draftsman and head of the Department, became responsible for wide-ranging additional wartime functions. Among a multitude of other legal issues he had personally to consider every proposal by a person of 'enemy' origin to buy or sell land under the Administration of National Security (Land Transfer) Regulations, each case dealt with by the Land Transfer Branch involving a separate detailed file. Unsurprisingly, like many senior officials of the time, Knowles worked excessively long hours. He coped with the ceaseless demands made on him by adopting disciplined work patterns. After lunch at 12.30 pm – 'a glass of warm water brought to him by his secretary' – Knowles locked his door and slept until 1.30 pm when he opened the door and continued work. During parliamentary sessions which frequently involved all night sittings he usually listened to the 7.00 pm news, slept from 7.15 pm to 7.30 pm and then went to Parliament House where he stayed until the House rose.[18]

People enlisting or called up to the armed services caused acute staff shortages in the Attorney-General's Department, as elsewhere. Legal officers worked much voluntary overtime in addition to the compulsory public service arrangement of at least one unpaid night a week. More outsiders were brought into the service generally, and expedient interim staffing arrangements were made. The Department temporarily engaged some retired magistrates and even judges displaced from other countries. With legal resources under such pressure senior officers (Legal Officer Grade 3 and upwards) were put on the reserved occupation list, meaning they were not liable to be called up. Drafters disgruntled about their ineligibility to enlist were placated by

[18] Story attributed to John Ewens.

assurances from their superiors that they would be of far more use carrying out their usual work.

So many regulations were drafted during the war that revised Senate committee arrangements were put in place to deal with them. A four-member Regulations Advisory Committee was appointed in June 1944. Taking into account the 'changing circumstances of war' the Committee was tasked with advising the Government on the review, repeal or modification of regulations and orders made under the National Security Act. The special committee functioned until the end of the War. When the usual Committee on Regulations and Ordinances was reappointed at the beginning of the Seventeenth Parliament in 1943 there was no lawyer senator available to undertake the duties of Chairman. Funds were provided for a retaining fee for 'an outside legal man' and recently ousted Senator John Spicer was appointed as the first external Legal Adviser to the Committee. Returned to the Senate in 1949, Spicer served as Attorney-General from December that year until August 1956.

Appointed as an external Legal Adviser to the Committee on Regulations and Ordinances in 1945, Senator John Spicer later served as Attorney-General from 19 December 1949 to 14 August 1956.

[Photograph courtesy of the Parliamentary Library and Auspic].

Japan's attack on Pearl Harbour in December 1941 brought the United States of America into the conflict, and war much closer to Australia. Singapore fell to the Japanese on 15 February 1942 and the first Japanese bombing raid on Darwin was made four days later, killing 243 people. Civilians were evacuated in Western Australia, Queensland and the Northern Territory in the face of air raids on Broome, Wyndham, Townsville, Katherine and further numerous bombings of Darwin. Sydney and Newcastle harbours were shelled and Japanese submarines attacked Australian shipping along the eastern coastline. Australian troops were engaged in new theatres of war in New Guinea and the Pacific. HMAS *Canberra*, which had been moored in Sydney Harbour during the Japanese midget-submarine attack, was sunk in the Battle of Savo Island off Guadalcanal in the Solomon Islands on 9 August 1942. Comparatively insulated by the city's inland location, Canberra's residents still lived with the threat of attack. The Belconnen Naval Transmitting Station was believed to be a target for the Japanese. Both

the attack on Sydney – in which 19 Australian and two British sailors on board the naval depot ship HMAS *Kuttabul* died – and the mass break-out of Japanese prisoners-of-war from the camp in Cowra, around 200 kilometres away, in 1944 were causes for alarm. A searchlight on Mount Ainslie constantly scanned the town at night, and air raid precautions were taken. Some other aspects of security remained relaxed – free movement in and out of the capital's public buildings, including Parliament House, was still possible.

John Ewens later reflected that 'the great impact of the war' was something which those who worked in the Department at the time could never forget. Remembering the events of early May 1942 when, despite great losses in a naval battle, Australia and its allies weakened the Japanese fleet sufficiently to prevent further attacks in the Pacific and New Guinea, Ewens said:

> *I think the most dramatic moment that I can recall in the Parliament, was the day in 1942 when I was in the House of Representatives on I think the Widows' Pensions Bill when John Curtin walked in quietly down the aisle and spoke to the Speaker and whoever was addressing the house at that moment was reduced to ask leave to continue his remarks at a later hour, and the Prime Minister announced to the most hushed House I've ever heard, the result of the Coral Sea Battle, which was the turning point in the war with Japan.*[19]

While Canberra's isolation and shortage of accommodation meant that it did not experience the same influx of American troops as other cities, it did have some foreign guests during the War. For some months from April 1942 a Netherlands East Indies squadron working in close cooperation with the RAAF was based at Fairbairn – bombing manoeuvres were practised over the plains of Tuggeranong. United States General Douglas MacArthur, who visited Canberra in 1942 during his term as supreme commander of the allied forces in the South-West Pacific Area, was said to be amazed by the common sight of stock grazing near Parliament House. Large numbers of Americans stationed in Australia resulted in some employment for Australian civilians but caused considerable disruption to everyday life. Many of the troops were on leave between postings and looking for a good time. Some angst resulted from vehicular accidents, enthusiastic courting of Australian women and occasional cultural differences. Of most significance for the Attorney-General's Department was the Americans' contribution to a thriving black market. Buying and selling in breach of wartime price and commodity control schemes, including rationing, were made offences under the *Black Marketing Act 1942*. Confined to the period of the war, or earlier termination by

[19] John Ewens at his farewell, 16 November 1972.

proclamation, the Act imposed much stronger penalties than those previously provided for under National Security Regulations.

Under the authority of the *National Security Act 1939* the first regulations rationing food and clothing were gazetted in June 1942. Australia's supplies of some products, such as tea, were obstructed or cut off and the production of others was curtailed by lack of manpower or needed to be diverted to the war effort. Rationing was intended to manage shortages, control consumption and reduce consumer spending. Enforced by the use of coupons to ensure equitable distribution of goods, rationing applied at various stages to clothing, tea, sugar, butter, meat and, during periods of shortage, to eggs and milk. It was illegal to exchange, sell or hoard coupons. The regulations were administered by the Commonwealth Rationing Commission, which maintained a sub-Directorate in West Block during the war.

COMMONWEALTH OF AUSTRALIA.

NATIONAL SECURITY (RATIONING) REGULATIONS.

RATIONING ORDER No. 1.

IN pursuance of the powers conferred upon it by the National Security (Rationing) Regulations, the Rationing Commission hereby makes the following Order:—

1. This Order may be cited as the Rationing Order No. 1. Citation.

2. In this Order— Definitions.

"rationed goods" means—

(a) Yarns;
(b) Cloth, whether woven, felted, knitted, netted or crocheted, made wholly or mainly from any textile other than jute;
(c) Wearing apparel;
(d) Blankets, bed linen, table linen, towels and handkerchiefs;
(e) Footwear, including overshoes, slippers and sandals;

"supply" includes supply in pursuance of a contract of sale, work labour and materials, sale or return, hire purchase, barter or a contract of any other description and supply as a gift.

3. A trader shall not supply, and a person shall not acquire, any rationed goods on Saturday, the thirteenth day of June, 1942, or on Monday, the fifteenth day of June, 1942. Sales of rationed goods on 13th and 15th June, 1942, prohibited.

Dated this 12th day of June, 1942.

H. C. COOMBS, Director of Rationing,
for and on behalf of the Rationing Commission.

—No. 165.—PRICE 6D.

The first wartime rationing Order, published in Commonwealth Gazette No. 165 of 12 June 1942.

From 1942 to 1945 Rae Else-Mitchell, later a Judge of the New South Wales Supreme Court, served in a legal capacity with the Rationing Commission. During this time he travelled frequently from Melbourne to Canberra, primarily to confer with the drafters responsible for the preparation of laws and regulations governing the rationing system. Like most people Else-Mitchell journeyed to Canberra by train. An arduous undertaking, this involved an overnight trip, leaving Melbourne at 6.30 pm on the 'Spirit of Progress' and changing (trains and rail gauges) to the Sydney Express in the heat, cold or dust at Albury midway. Canberra passengers needed to be careful to catch the 'second division' of the Express – the one which stopped at Goulburn very early in the morning for carriages to be shunted off for the final stage of their journey. On rare occasions a Commonwealth car might be despatched to meet Canberra passengers at Yass Junction, transporting them on the bush road to the capital. Otherwise the train from Goulburn arrived in time to start the working day. While sleeping carriages were generally available early in the war, they were in short supply later on and there was a rush (and much cash passed to the conductor) to ensure a good seat in which to sit up all night.

Business travellers unable to catch the night train out to Sydney or Melbourne were generally accommodated at the Civic or Wellington hotels.[20] Canberra centred around Civic and Kingston at the time, Lyneham was on the outskirts of suburbia. Some politicians and senior public servants lived at the Kurrajong Hotel in Barton, but most parliamentarians lived at the Hotel Canberra[21] when Parliament was in session. These lodgings were readily reached by foot from government offices in East and West Blocks – except in the magpie swooping season in early Spring. The Hotel Canberra's small front bar was crowded with public servants by five o'clock in the afternoon. Else-Mitchell recalled drinking there with Treasury officials Fred Wheeler and Horrie Brown, and the Attorney-General's Department officers with whom he worked – Joe Tipping, Bill Fanning and 'Charlie' Comans.[22]

[20] Built in 1935 on the corner of Alinga Street and Northbourne Avenue (eastern side), the Hotel Civic was demolished in the mid-1980s. The Wellington was on the corner of Canberra Avenue and National Circuit in Forrest – the site of the later Rydges Capital Hill Hotel.
[21] Later the Hyatt Hotel Canberra.
[22] R Else-Mitchell, in J Baskin (editor), *Wartime in Canberra – An Oral History of Canberra in the Second World War*, National Trust of Australia (ACT), Pirion, Canberra, 2005, p. 89.

The Hotel Canberra in the 1930s. Its front bar was a favourite meeting place for public servants, including some of the drafters, after work. [Photograph courtesy of the National Library of Australia]

Restricted train travel, necessitating a priority clearance to travel for work purposes, contributed to the isolation of Canberra during the war. Cars were expensive and difficult to run with regulations rationing petrol and rubber for tyres and tubes, and buses were in short supply. Bicycles became an almost universal mode of transport and self-sufficiency was encouraged. Many people went home for lunch. Social and sporting events were held to raise money for the war effort, and hospitality was extended to service personnel and the occupants of government hostels. Rations were supplemented from gardens – and by rabbits, hares and mushrooms obtained in the paddocks around Canberra. By the end of the war alcohol was hard to get and the acquisition of a keg or bottles of wine was good cause for a party.

As affected by the tragedy of war as anywhere, Canberra lost a great many young men from its local community. RAAF pilot Lindsay Knowles, Sir George's son, was killed in action in Libya. Sir Robert Garran's son, John, was a prisoner of war in Changi, Singapore and was sent by the Japanese to work on the Burma Railway. Ron King, who became a drafter after the war, served in the militia when he was 18 then put his age up by two years to enlist in the Army in 1940. Severely wounded in action in the Middle East he

had his right arm amputated in May 1941. The stress of the time took its toll on a second government leader. Prime Minister John Curtin died at his official residence, the Lodge, just weeks before hostilities finally ended on 15 August 1945. He was succeeded as Prime Minister by his good friend and wartime Treasurer, Ben Chifley.

Even the Prime Minister walked to work. Ben Chifley (Prime Minister from 1945 to 1949) on his daily walk from the Hotel Kurrajong to Parliament House. As Treasurer during the Second World War Chifley introduced legislation centralising income taxes and establishing the Pay-As-You-Earn (PAYE) system of collecting tax. In Opposition, he died in his room at the Hotel Kurrajong on the night of 13 June 1951. Underway at Parliament House, a ball celebrating fifty years of federation ended immediately when news of Chifley's death broke. [Photograph courtesy of the National Archives of Australia]

Statute of Westminster Adoption

Passage of the *Statute of Westminster Adoption Act 1942* evidenced Australia's developing political maturity. A British Act which, when adopted by a dominion, effectively provided that the British Government could no longer make any decisions for that dominion, the Statute of Westminster had been available to Australia since 1931. Enacting agreement reached at the 1926 Imperial Conference, the Statute reiterated the

principle stated in the consequent Balfour Declaration that, instead of the previous hierarchical relationship between Britain and the colonies, the Crown symbolised 'the free association of the members of the British Commonwealth of Nations'. Adoption of the Statute by Australia was delayed primarily because of continuing and capable opposition by former Attorney-General, then Chief Justice of the High Court, Sir John Latham. Although he had been party to the Paris Peace Conference and the Treaty of Versailles at the end of the First World War, as well as the 1926 Imperial Conference, and agreed with the principles recognising Australia's autonomy as a self-governing nation, Latham was opposed to codifying them in written law. Endorsement of the Statute became a priority after Japan entered the Second World War at a time when most of Australia's defence forces, under effective British command, were fighting in Europe and the Middle East. Disagreement between the Australian and British Prime Ministers about the most strategic deployment of Australia's military forces prompted adoption by Parliament of the Statute of Westminster. Provisions of the Statute of Westminster Adoption Act which came into operation on 9 October 1942, the day it was signed, were made retrospective to 'the Commencement of the War between His Majesty the King and Germany' in 1939.

One effect of the Statute of Westminster Adoption legislation was that it removed the necessity for reserving certain Bills for the assent of the sovereign. Ten Bills, most related to shipping and navigation, had been reserved since 1901. Nine had received the Royal Assent. The one which did not was the Customs Tariff (British Preference) Bill of 1906. Passed by the Australian Parliament despite heated debate over the inclusion of an amendment relating to conditions of employment on British ships, the Bill was reserved by the Governor-General, acting under section 58 of the Constitution. With the likelihood that Assent would be refused, since the provision actually conflicted with British treaties, the Government withdrew the Bill. Some Bills continued to be reserved for Royal Assent after 1942 – the last one subjected to this procedure became the *Privy Council (Appeals from the High Court) Act 1975*.

Indigenous Legislation

Pressure on the Commonwealth to take on a national role in Indigenous legislation was mounting by the 1940s. Preoccupied with the structure and organisation of the forthcoming federal government, the drafters of the Australian Constitution did not assign citizenship rights to any Australians, and little attention was paid to Aboriginal people during the federation debates. Under section 51 (xxvi) of the Constitution the 'aboriginal race' (deemed as needing 'special laws') was included in the list of responsibilities specified as outside the 'peace, order, and good government' powers of the Commonwealth. Various State 'protection' laws controlling the lives of Indigenous Australians remained in place. Neither, under section 127, were 'aboriginal natives' to be

counted in the Commonwealth census. 'Coloured races' were excluded from the entitlement to vote in elections under the *Commonwealth Franchise Act 1902*. After the Northern Territory was transferred to Commonwealth control in 1911, church and humanitarian groups increasingly lobbied the Government to take on national responsibility for Aboriginal people and unity grew in protests from Indigenous peoples against the oppressive laws regulating them. In February 1928 the Australian Aboriginal Progressive Association made a submission to the Royal Commission on the Constitution, in support of centralising Indigenous affairs. Arguing that the States were 'better equipped for controlling aborigines than the Commonwealth', the Commission recommended periodic conferences between the relevant State authorities and encouraging the work of voluntary bodies rather than any constitutional change. The thrust of a minority report favouring constitutional amendment was echoed by Sir Robert Garran who, speaking on the need for a races power at the Australian Legal Convention in 1935, said: 'The problem is essentially the same, in whatever part of Australia it exists, and there might be a better chance of dealing with it satisfactorily if it could be dealt with as a whole on an Australian basis.'

On the grounds of Commonwealth lack of authority concerning Aboriginal people living in the States, the Commonwealth Government in 1938 refused to forward to the King a petition signed by more than 2500 Indigenous people asking for an Aboriginal representative in the Federal Parliament. Following a Conference on Aboriginal Welfare in 1937, some States developed policies relating to Aboriginal social welfare. These tended to focus on assimilation and conditional rights to citizenship. Aboriginal participation in military service during the war and contact with the comparatively skilled, wealthy and independent black American troops both fostered aspirations of greater civic and economic equality for indigenous Australians. While Aboriginal and Torres Strait Islander peoples were recognised under the first Nationality and Citizenship Act, passed in 1948, some legislative discrimination against them persisted. Only those Indigenous people who had served in the armed forces or who were already enfranchised under individual state laws were given the right to vote at federal elections under the *Commonwealth Electoral Act 1949*.

Post-War Reconstruction

A Bill aiming to extend the Commonwealth's constitutional authority for sufficient time after the war to facilitate post-war reconstruction and the re-employment of returned service personnel was introduced in October 1942. The draft was considered at a special conference of all Federal and State Government and Opposition leaders held in Canberra later that year. Trying to avoid the cost and disruption of a referendum, an attempt was made to achieve the change through State reference of powers to the Commonwealth under section 51 (xxxvii) of the Constitution. After this plan failed – the

Bill meeting with unfavourable responses in some State parliaments – a Constitution Alteration (Post-war Reconstruction and Democratic Rights) Bill was introduced in February 1944. This aimed to insert in the Constitution fourteen heads of power endorsed by the Canberra conference in 1942.

Areas in which the Commonwealth sought responsibility ranged from reinstatement of discharged servicemen through employment, various commercial measures, uniform railway gauges, and family allowances to, finally, 'the people of the aboriginal race'. Three constitutional guarantees relating to freedom of speech, religious tolerance and safeguards against the abuse of delegated legislative power were subsequently added to the Bill. Following Labor's resounding election victory in August 1943, much of the previous Opposition support for the proposals evaporated with fears that, if introduced for even the specifically limited five-year period, the expanded powers might be misused to implement socialist schemes.[23] Ultimately put to a referendum on 19 August 1944, the proposals were defeated, only South Australia and Western Australia supporting it. The single question on the ballot paper asking 'Do you approve of the proposed law for the alteration of the constitution entitled *Constitution Alteration (Post-War Reconstruction and Democratic Rights) 1944*?' denied voters the opportunity to approve or reject individual changes.

Legislation pertaining to reconstruction and the post-war future was drafted in the 1940s. A Department of Post War Reconstruction was created in 1942. Governments under various leaders showed increasing concern with social services. Child endowment Acts were passed in 1941 and 1942, and widows' pensions laws in 1942 and 1943. Payments for the unemployed and people too ill to continue working were provided under the *Unemployment and Sickness Benefits Act 1944*. Pharmaceutical and hospital benefits schemes were introduced in 1944 and grants to the States to undertake mass diagnosis and treatment of tuberculosis were made under the Tuberculosis Acts of 1945 and 1946. Under the *National Fitness Act 1941* a Commonwealth council was established, charged with promoting activities to enhance national fitness especially in educational institutions. Bodies to administer Commonwealth scholarships, and those with special responsibilities for tertiary education of ex-service personnel in re-establishment programs, were created under the *Education Act 1945*.

Dealing with the question of divorce for the first time, the Commonwealth government passed the *Matrimonial Causes Act 1945*. One provision, authorising State courts to hear divorce cases where a husband living overseas had deserted his wife in Australia, was included mainly to deal with failed marriages between Australian women and American servicemen. Grounds for divorce still varied under individual State legislation.

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[23] G Sawer *Australian Federal Politics and Law 1929-1949*, p. 172.

Guardianship of orphan immigrants or refugee children was provided for by the *Immigration (Guardianship of Children) Act 1946*.

Post-war legislation reflected Australia's growing global awareness. The *War Crimes Act 1945*, providing for the trial and punishment of war criminals by Australian military courts, had broad extraterritorial application. Five Treaty of Peace Acts approved treaties with Italy, Hungary, Rumania, Bulgaria and Finland in 1947. United Kingdom Grants Acts passed in 1947, 1948 and 1949 made significant monetary grants to the United Kingdom in recognition of its struggles and sacrifices during the Second World War. Attorney-General Evatt, who led the Australian delegation to the founding meeting of the United Nations in 1945, was elected as its president in 1948. He helped to draft the United Nations Declaration on Human Rights which was signed the same year. To facilitate the work of the United Nations representatives at its meetings, its staff and property were given immunity from national taxation and certain legal proceedings under a Convention, adopted by Australia under the *International Organizations (Privileges and Immunities) Act 1948*.

Australia's membership of various international organisations was governed by legislation such as the *World Health Organization Act 1947*. The *International Monetary Agreement Act 1947* approved membership of both the International Monetary Fund and the International Bank for Reconstruction and Development and adopted their Articles of Agreement. The *United Nations Educational, Scientific and Cultural Organization Act 1947* approved the constitution of that organisation and the *International Labour Organization Act 1947* a revised constitution for the body established in 1944. Acceptance of the General Agreement on Tariffs and Trade made at Geneva in 1947, and Australia's participation in the international trade organisation formed at Havana in 1948 – both conditional on the involvement of the United Kingdom and United States of America – were legislated by the *International Trade Organization Act 1948*. Ratification of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide was approved under the *Genocide Convention Act 1949*. A shift away from the prevailing 'White Australia' policy, which favoured applicants from European countries, was made by the *Immigration Act 1949*. Signalling the beginning of multiculturalism, the Act allowed non-European refugees to stay in Australia, and Japanese war brides to enter the country.

1940s Developments

Laws governing a changing employment environment were drafted as a result of the Second World War. Under the *Commonwealth Public Service Act 1940* provision was made for the Public Service Board to initiate appeals against promotion on behalf of officers absent on war service. The *Australian Soldiers Repatriation Act 1943* extended employment preference provisions to cover soldiers returning from the Second World War. Work related courses of study directed to post-war reconstruction needs were encouraged by the *Commonwealth Public Service Act (No. 2) 1947*. A Wartime Man Power Directorate tasked with allocating resources between civilian and defence needs gave way to a permanent Commonwealth Employment Service (CES) in 1946. Under the *Re-establishment and Employment Act 1945*, the initial focus of the CES was on re-employing or re-establishing service personnel and civilians who had been engaged in war work.

A New South Wales politician in the late 1920s, Herbert Vere (Doc) Evatt was appointed to the High Court at age 36, in 1929. Later entering Federal Parliament as the Member for Barton, he was Attorney-General and Minister for External Affairs from 7 October 1941 to 19 December 1949. Following Ben Chifley's death, Evatt served as Leader of the Opposition from June 1951 until he retired from politics in 1958.

[Photograph courtesy of the Parliamentary Library and Auspic]

A marked increase in female employment in traditional male areas, encouraged by the government in order to free men to enter the armed forces, led to passage of the *Women's Employment Act 1942*, providing for the establishment of a Women's Employment Board. The Board's function of determining remuneration and working conditions for women engaged in certain occupations during the war was devolved to a judge in the Arbitration Court late in 1944. Full male rates of pay were accorded to females in limited employment categories during the war, but women in the public service remained on lower salary scales for decades afterwards. The marriage bar (preventing women from retaining public service jobs after they married) stayed in place until 1966.

Containing only five sections, the two-page *Federal Franchise Act 1902* gave most adult women the right to vote. The Act also made Australia the first nation in the world to give women the right to stand for Commonwealth Parliament. Despite this

ground-breaking achievement no women were elected until 41 years later – long after the Act was repealed and its provisions re-enacted in the *Commonwealth Electoral Act 1918*.

In 1943 Dorothy Tangney became Senator for Western Australia and Enid Lyons was elected to the House of Representatives. Then aged 31, a former school teacher, Tangney served in the Senate for 25 years, and was Western Australia's representative at the National Conference on Equal Pay held in Sydney in 1958. The widow of the former Prime Minister, Enid Lyons had also been a teacher and was the mother of 12 children. She later became the first woman in Federal Cabinet. A strong believer in the right of women to a place in government, Lyons espoused the view that women in the public arena must be prepared to work as men worked, attacking the same problems and shouldering the same burdens. Her priorities included the elimination of discrimination in employment and improving conditions for women, children and families. Before retiring in 1951 she influenced legislation providing equal training allowances for returned service men and women, and extending child endowment.

On one of the rare occasions when the Australian public approved by referendum a change to the Constitution, an amendment concerning social services was made in 1946. The Commonwealth's power to pay social services benefits had been brought into question by the *Pharmaceutical Benefits Case*[24] in the High Court in 1945. The judgement in this case found aspects of the 1944 Act to be unconstitutional. Bipartisan agreement that the constitutionality of the Commonwealth's spending power for such services should be confirmed by a constitutional amendment led to the referendum in September 1946. Despite the obvious risk of losing the many social benefits already provided by the Commonwealth, the question was carried only narrowly, with a 54.5 per cent 'yes' vote. The *Constitutional Alteration (Social Services) 1946* recognised the Commonwealth's role in providing existing social services and gave it further power in the areas of medical and dental services.

[24] *Attorney-General (Vic); Ex rel Dale v Commonwealth* [1945] HCA 30; (1945) 71 CLR 237.

A Critical Omission

Charles Comans had an especially memorable experience while working on the first of several constitutional amendments he drafted, relating to the social services power in 1946. Given brief drafting directions in Attorney-General Evatt's handwriting, and being 'young and keen', Charles was determined to make some meaningful contributions to the Bill. His first inspiration proved positive when he introduced a form of words which facilitated practical implementation of the new social services laws. An attempt to keep the draft pithy was not so successful. Construing 'pharmaceutical benefits' to be included in 'sickness benefits', Charles struck out the former term from the list of powers covered by the Bill. The crucial deletion was not noticed until after the Constitutional Alteration (Social Services) Bill had been introduced and was before the House of Representatives. Then a young father with a newborn daughter, Charles went to the Manuka shops after work to help his wife push their heavy pram up the hill to their home in Bremer Street, Griffith. As they began their walk a large black Commonwealth car drew up alongside, the driver leaning out to inform Charles: 'Doctor Evatt wants to see you at once!' Escorted to Parliament House Charles found George Knowles and Gilbert Castieau waiting for him with the Attorney-General. The senior officers' solemn and anxious faces did nothing to dispel their junior's nerves. Asked by Evatt to account for the omission of 'pharmaceutical benefits', Charles made his explanation as best he could. Much to the collective relief of the drafters the Attorney-General merely exclaimed: 'Oh no, we can't have that, we must have it in!' Evatt subsequently moved an amendment in the House, saying the phrase had been left out by an oversight. Happily the incident did not diminish future working relationships and Charles was asked to provide further support to Evatt during his term in office.

[Recounted by Charles Comans at his farewell in 1977, and in subsequent oral history interviews]

Parliamentary proceedings became more publicly accessible following passage of the *Parliamentary Proceedings Broadcasting Act 1946*. This provided for a Joint Committee on the Broadcasting of Parliamentary Proceedings, responsible for drawing up policy and operational principles for transmissions from each House. Under the Act, the Australian Broadcasting Commission (ABC) was required, when directed, to record events regarded as of sufficient public or historical interest. The second Parliament in the British Commonwealth to introduce compulsory radio broadcasting Australia was behind only New Zealand, which had begun the practice in 1936. An unsuccessful attempt to initiate broadcasts had been made in the Senate in November 1927, when New South Wales Senator John Grant moved that a transmitting station be set up so that Senator's speeches might be 'heard with pleasure by thousands of people'. Vigorous in rebuttal, one of his State colleagues expressed 'pity for the poor unfortunate electors'. He declared that the most value from the suggestion might come from assistance to the Council for Scientific and Industrial Research in its quest to

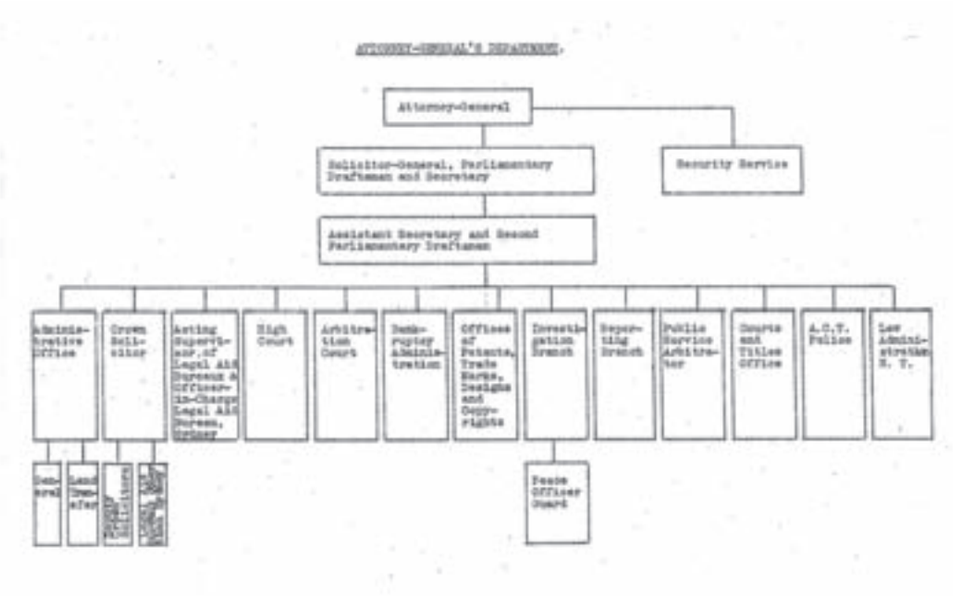
combat a prickly pear infestation, saying: 'If the poison gas from this chamber could be conveyed to the areas affected by prickly pear it might confer a benefit on Australia'.[25] After radio broadcasting of proceedings commenced in the House of Representatives from 10 July 1946, drafters were able to monitor some debates on legislation in the Parliament while continuing with their work. Televised access to proceedings was not made available until 1991.

Keeping an eye on televised parliamentary proceedings. First Assistant Parliamentary Counsel Meredith Leigh at a dual monitor workstation, made available to drafters from 2009. The wooden-cased radio on the end of the desk, typical of those manufactured by Philips Australia around the 1960s, was used by drafters of earlier decades to listen to debates. Meredith was made custodian of the radio by OPC Editor Allan Greenwood, when he went on leave shortly before his death on 25 August 2004. MTA House 2011. [OPC photograph]

Attention was again given to Canberra's development after the war. Plans were made for the transfer of more government departments from Melbourne. Work on new government offices in the Administrative Building recommenced. The *Representation Act 1948* increased the number of seats in the House of Representatives from 75 to 123 and the Senate from 36 to 60. The *Australian Capital Territory Representation Act 1948*

[25] G McIntosh, op.cit, re Senator Walter Duncan (Nat, NSW), Australia, Senate 1927, *Debates*, vol. 117, pp. 1834–1835.

provided for an additional Member representing the Australian Capital Territory to be elected to the House of Representatives – giving ACT citizens the franchise in federal elections for the first time. Elected on a similar legislative basis to that applying in the Northern Territory from 1922, the ACT Member was able to vote only on motions to disallow ordinances of the Capital Territory. Full voting rights were not granted to the ACT Member until 1966 or to the Northern Territory representative until 1968. Citizens of both the Australian Capital and Northern Territories (which had no constitutional guarantee of a minimum number of seats in Parliament) remained unable to vote in referenda until the necessary constitutional amendment was passed by referendum in 1977. By then the ACT had a second Member of Parliament, and the ACT and Northern Territory had two Senate seats each.



Organisation chart of the Attorney-General's Department in 1945. Placed in the Administrative Office in Canberra, parliamentary drafting was clearly a significant, but not a discrete, function.
[Attorney-General's Department File S.45/1687]

Departmental Changes

Sir George Knowles retired from the positions of Secretary, Solicitor-General and Parliamentary Draftsman on 8 May 1946. Gruelling years in these roles culminated with the especially active term of Attorney-General Herbert Vere (Doc) Evatt. Evatt's request to send Knowles to the United States of America in April 1945 to lend his invaluable knowledge of the League of Nations charter and his 'unsurpassed' drafting skills to the development of a new statute for a permanent Court of International Justice[26] was reluctantly refused by the Prime Minister on the grounds that Knowles was indispensable for the parliamentary session in Canberra. Professor Kenneth Bailey (consultant to the government and former dean of the law school at the University of Melbourne) worked on the drafting project in America and subsequently succeeded Knowles as Secretary to the Attorney-General's Department and Solicitor-General. Knowles accepted a diplomatic appointment as Australia's first High Commissioner to South Africa, where he died while still in office only 18 months later.

Martin Boniwell succeeded Knowles as Parliamentary Draftsman. Acting in the position from 9 May 1946, during a period of significant organisational change, Boniwell was permanently appointed to it on 8 July 1948. In the Attorney-General's Department since 1912, he was Assistant Secretary and Assistant Parliamentary Draftsman from 1932 until February 1939 when he was made Public Service Arbitrator, serving as such for the duration of the Second World War. He inherited a more settled arbitration environment than the tense state which existed in the wake of the *Public Service Act 1922* and subsequent amendments, when the Public Service Board and associations jostled for power to determine pay rates. Although the staff associations had developed a cooperative relationship with the contemporary Public Service Commissioner, Boniwell regarded his role as that of a judge deciding a dispute between two parties. He focused on legal technicalities and refused to follow the practice of ratifying agreements already reached outside the Arbitration Court. The Arbitrator was given extra functions relating to references under the National Security (Industrial Peace) Regulations and women's employment matters during the war. His powers were somewhat circumscribed under the National Security (Economic Organization) Regulations, but Boniwell returned to his previous approach in peacetime. This rankled with the staff associations, whose early apprehension about his appointment had been vindicated.

Believing that Boniwell took his position too seriously, the associations were not happy when he was replaced as Arbitrator by another senior drafter. Gilbert Castieau was appointed to the role on 8 February 1946, and remained in it until he retired in December 1955. A veteran tax drafter, Castieau had served a short term as Deputy

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[26] Attorney-General Evatt, cable to Prime Minister Curtin, 13 April 1945.

Crown Solicitor in Melbourne from mid-1929 until persuaded to return to Canberra where his drafting skills were in demand. He was appointed to the new office of Second Assistant Secretary and Second Assistant Parliamentary Draftsman in February 1933, and succeeded Boniwell as Assistant Secretary and Assistant Parliamentary Draftsman early in 1939.

Castieau's term as Public Service Arbitrator began in a year of industrial unrest. Unions campaigning for improved post-war conditions, including a 40-hour working week, instigated a series of disabling strikes prompting Prime Minister Chifley at the end of 1946 to call for calm. The *Conciliation and Arbitration Act 1904* was amended in 1947 to enhance the role of conciliation commissioners in assisting parties to reach agreement outside the Court. Public service departments had more than doubled in number during the war, and the total staff in the Attorney-General's Department grew from 437 in 1939 to 852 in 1947. A general change in emphasis from regulatory functions to more pro-active public service administration expanded both the range and complexity of laws being drafted, including those for government agencies operating under legislation other than the *Public Service Act 1922*. Terminating wartime 'wage-pegging' controls, the Public Service Board reviewed salaries and employment conditions across the service. Recruitment, training and staff welfare were enhanced and wide-ranging organisational reclassifications undertaken.

Timely Advice

Reminiscing about the Attorney-General's Department in the 1930s, John Ewens told a story about Martin Boniwell:

> *He was a great leg puller, as well as being a really great lawyer, and a skilled draftsman. I was in his room one day and he used to receive the inwards mail, and there was a letter there from what was then the Department of External Affairs. In those days of course, there were no divisions. There was no Parliamentary Drafting Division, or Advisings Division or Executive Division – just a department and all the work was mixed up. You could be doing any sort of work any day. This letter from External Affairs asked would we furnish them with advice on a particular subject. Our records organisation was as good then as it is today, and we looked on their cards and we found that the subject was already indexed and they got out a file from 1904 and promptly put this letter on top of it and sent it into Mr Boniwell. Now Mr Boniwell sent a reply to External Affairs in these terms: that he acknowledged receipt of their letter asking for advice about this question of law, and when the information asked for in our letter of such and such a date in 1904 was received, we would still be pleased to give the advice!*
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> [John Ewens speaking at his at his farewell function, 16 November 1972.]

A plaint filed by the Commonwealth Legal Professional Officers' Association in November 1947 sought all round salary increases and other benefits for legal officers. Resubmitted to reflect organisational changes gazetted in May and October 1948 the plaint came before Arbitrator Castieau late that year. Numerous witnesses from the Attorney-General's Department gave evidence relating to all levels of legal work. Proving to be capable advocates, John Ewens and Charles Comans appeared on behalf of the parliamentary drafters. In his evidence Comans pointed to the importance of the drafters' role in 'critically examining proposed legislation from the policy angle', especially when dealing with the growth in administrative and social services legislation, saying that principles of law and natural justice could 'only be preserved by vigilance on the part of the draftsman'. Noting that he was 'well aware' of the drafters' duties and responsibilities, Castieau commented on the arduous nature of the work, on skills which could 'only be acquired with long and varied experience', and on requirements to possess a wide knowledge of the law and to work irregular hours.[27] The markedly improved salary scales he fixed recognised the increased responsibility, discretion and judgement associated with the growing volume and complexity of the Department's work. Legal officers subsequently applied for a further margins increase granted to other professionals in the public service. Strongly opposed by the Public Service Board, their application was granted by Arbitrator Castieau in 1950.[28]

In response to increasing workloads in drafting, litigation and the provision of advice and opinions, the Attorney-General's Department was reorganised. Additional senior positions were created and a new Executive Section established. An Advisings Section was set up to provide legal advice to the Government and departments, the Crown Solicitor's Office became a separate division of the Department in 1948 and the Parliamentary Drafting Division was established to carry out a dedicated legislative drafting function. New Assistant Parliamentary Draftsman positions were created in October 1948, and John Ewens was promoted to a reclassified position of Principal Assistant Parliamentary Draftsman in December that year. Classified at Senior Legal Officer level, the position of 'Secretary to the Ministers in the Senate' remained in the Division. Its duties were described as attending the Senate during sittings, advising Senate Ministers on all matters before the Senate, studying the Bills introduced into the House of Representatives and 'advising Senate Ministers thereon', and providing general assistance as required with the work of the Parliamentary Drafting Division.

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[27] Proceedings before the Public Service Arbitrator. In the matter of the Commonwealth Legal Professional Officers' Association and the Attorney-General and the Commonwealth Public Service Board. Determination No.46 of 1949, pp. 57-58.
[28] ibid. Determination No.100 of 1950.

Drafting Genealogy

In his memoirs Robert Garran recounted how his mother had once been given responsibility for drafting a Bill. In Sydney in 1879, Mary Garran, 'a woman of very wide sympathies', formed a committee which successfully piloted a system of placing children from institutions with foster families. When the scheme got too large for the private society to handle, Mrs Garran persuaded the New South Wales Premier, Sir Henry Parkes, that the system should be placed under government control. As Garran described it:

> *They had won the confidence of the Government; and in 1881 the State Children's Relief Act was passed, based almost wholly on the regulations of the Society. There is a story that Parkes said to the committee, 'You ladies seem to know what you want much better than I do; draft your own Bill and bring it to me'; that my mother, perhaps with her husband's help, drafted the Bill, and that the parliamentary draftsman saw little to alter.*
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> [*Prosper the Commonwealth* 'Boarding Out Children' pp. 21-23]

Robert Garran's third son, Andrew, was Parliamentary Draftsman for the State of Victoria from 1955 to 1957, before becoming Chairman of the Victorian Public Service Board.

Andrew Garran was succeeded by John Joyce (Jack) Lynch, who was Parliamentary Draftsman in Victoria from 1957 until his death in 1965. Lynch's daughter Mary worked in the Commonwealth Parliamentary Drafting Division from 1964 to 1969, and in 1967 married fellow drafter John McKenzie. Her niece and Jack Lynch's granddaughter, Johanna Lynch, was a drafter in OPC from 2008 to 2010 before returning to private practice in Perth.

John Ewens, whose son Warren became a prominent mathematician, once likened drafting to mathematics:

> *One writer had described drafting as mathematics in words. He meant that the work must be accurate, that the equations in words must balance like those in figures. This induced severe mental strain, which few lawyers were prepared to accept. It was difficult to convince those with the right temperament and qualities to undertake drafting. Those who could should be encouraged to make it their life's work.*
>
> [FPC John Ewens, at the First Australian Parliamentary Seminar in Canberra in September 1972, not long before his retirement.]

Dedicated Drafting

Dedicated Drafting

Already aged 65 when he was permanently appointed as Parliamentary Draftsman in July 1948, Martin Boniwell retired eight months later on 7 March 1949. He returned to his home in Melbourne, where he continued doing some work for the Department, including preparing a comprehensive consolidation of Commonwealth Acts from 1901 to the end of 1950. John Ewens was appointed Parliamentary Draftsman from 9 June 1949. Head of the Parliamentary Drafting Division, he was responsible to the Attorney-General through the Secretary to the Department, who was also the Solicitor-General. Appointed Principal Assistant Parliamentary Draftsman at the same time, Charles Comans was deputy to Ewens for 23 years, often standing in for long periods as division head while Ewens acted as Secretary during the frequent absences of Professor Kenneth Bailey, and later of Ted Hook. Except for the remaining months of 1949, the entire term of the Ewens-Comans leadership was served under a Liberal coalition government. Ewens retired just before the next Labor government was elected at the end of 1972.

The Administrative Building, King Edward Terrace, Parkes, ACT. Home to the Attorney-General's Department from 1956 to 1983, the building was later renamed the John Gorton Building.
[Photograph courtesy of the National Library of Australia]

The Ewens Era

Dedicated, professional and widely respected for his superb drafting abilities, Ewens ran a highly disciplined division. Many found his leadership style difficult to work with, but he provided support to his drafters in tricky situations, and protection from the unreasonable demands of some instructors. Dubbed 'Mr No' by clients whose wishes did not always prevail with him, Ewens worked on the premise that 'Bills are made to pass'. Ewart Smith, who joined the Parliamentary Drafting Division in 1952 described it as staffed by very able officers and similar to a university environment, albeit one in which problems had a very practical application.[1] Professor Bailey advised all legal officers of the Department to take home the Constitution at least once a year, and read it from cover to cover as a discipline, telling them they would be surprised by what they could forget.[2] The *Monthly Bulletin for Legal Officers* published within the Department included summaries of cases of special interest and a digest of opinions given by the Secretary or the Crown Solicitor.[3] Painstakingly indexed volumes of these opinions were kept in large books in the Opinions Room. The drafters were located near the Department's library, a most significant resource for their work.

At that time the Parliamentary Drafting Division had a nominal strength of 13 officers – the Parliamentary Draftsman, a Principal Assistant Parliamentary Draftsman, one Assistant Parliamentary Draftsman, two Principal Legal Officers, one Senior Legal Officer and seven Legal Officers of different grades. An ongoing shortage of skilled drafters meant that not all positions could be filled. Numerous clerical and legal positions in the Department also lacked occupants in the wake of recent substantial organisational change. Differing from the English tradition, drafters did not work in set 'pairs', but all work was submitted to a specified senior drafter for revision and Bills went to the Parliamentary Draftsman for final approval. Bills were generally allocated by Ewens and subordinate legislation by a designated senior officer. Junior drafters were told which senior drafter would settle work for each project – sometimes under a more general arrangement determined by the Parliamentary Draftsman. Settling was often done with a client in the room. A particularly useful piece of advice given to new drafters was: 'if 'Jake' (meaning Ewens) gives you a Bill, make sure you give it top priority!' Experience imparted by the senior officers was the primary training aid. Ewens and Comans were both advocates of on-the-job training. Jim Monro, who was promoted from the Patents Office to a Senior Legal Officer position in the Division late in 1955, later became the primary mentor of junior staff. He was renowned as a good and patient trainer.

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[1] E Smith, *The Australia Card. The Story of its Defeat*, Sun Books, Hong Kong, 1989, p. 43.
[2] ibid p. 58.
[3] From 1964 former drafter Don Thomas was a long-term editor of the *Monthly Bulletin*, assisted in this task from around 1972 by another former drafter, Marie (Kinsella) Sexton.

Booking In

Over the decades, new drafters found that more than the mysteries of drafting needed to be learned on the job. Ewart Smith, who described it as a privilege to be part of the drafting team he joined in 1952, faced an administrative dilemma relating to the signing of the attendance book:

> *It was not long, however, before I found that life was not to be without its irritations. Having been 'free' for many years, it was discovered after some months that I had not been 'signing the book'. A dreadful sin indeed! In fact, I had been told by my senior officer not to do so, unless expressly directed. Now I was expressly directed, and had no choice. Contemporaneously, a directive arrived from the administrative officer detailing who had to sign which book, for it turned out there were two attendance books. I had reason to study the directive and it seemed simple enough. Some officers who should have been signing the book had not been signing it, it said, then it went on: 'Officers located south of the library will sign the book kept by Mr 'X'; those situated north of the library will sign the book kept by Mr 'Y'. '*
>
> *But this apparently innocuous document in truth threw up a number of problems. While making sure I signed one of the books, I prepared and circulated an opinion that dealt with them. First, the opinion asked, where was the library? It was indeed scattered; some of it was in my room, for example, as well as in the rooms of other officers. What of officers actually located in the main library, as two of them were, due to accommodation shortages? And what of Mr Tudor, who occupied a room immediately above the main library? These were enough to dispose of the matter, the opinion stated, without considering such interesting questions as whether 'south of the library' embraced cases where an officer was situated, on balance, more south than north or needed to be substantially more south than north. The opinion said the directive was clearly void for uncertainty and no one was obliged to sign either book! While this was done in fun, it very much upset the administrative officer. If it made him more precise in future, it was a lesson well learned, however. A few weeks later I was promoted to a position above the level where one needed to sign on and never again was called on to sign a book.*
>
> [Ewart Smith, The Australia Card. The Story of its Defeat, p. 37.]

Signing-on conventions were still taken very seriously 25 years later, as Hilary Penfold found when she started drafting in 1977:

> *When I joined OPC in the late 1970s we still had an attendance book for non-drafters and for junior drafting staff. The book sat on a counter at the entrance to the office, and staff signed in and recorded their time of arrival. At some point (theoretically 8.30 am) a red line was ruled, and anyone who signed in below the red line was deemed to have been late. It took me a while to learn the etiquette of the attendance book, and finally one of the other staff took me aside and pointed out that arriving at 8.30 am wasn't a good reason for signing in at*

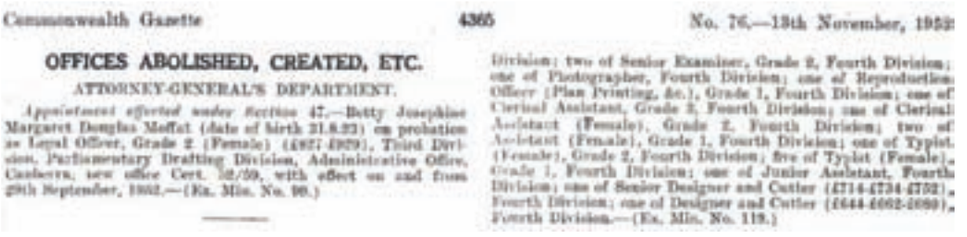
> *8.30 am, because then colleagues arriving after that had no legitimate time they could use. The proper thing to do was to sign in at a time one minute after the previous arrival, thus leaving plenty of slots for later colleagues to use before someone wrote 8.30 am and the red line had to be drawn.*
>
> [Story told by FPC Hilary Penfold during her review of the Parliamentary Counsel's Committee Drafting Forum, Melbourne August 2001.]

Advocating critical examination of drafts to achieve 'simplification and clarity of wording'[4] the drafters were mindful that this took time as well as endeavour. Without the 'wild rush for legislation' that would become endemic, drafters initially had more time to think about and 'polish' Bills.[5] By 1954 the Division was experiencing difficulties recruiting sufficient drafters to cope with its workload. That year the Treasury raised concerns with the Attorney-General's Department about long delays in promulgating defence regulations. Explaining that the Parliamentary Drafting Division had been staffed below its authorised establishment for some years but had proved unable to recruit new staff, the Secretary responded that the Division was 'so heavily pressed with work'[6] that it was unable to do more than keep abreast of urgent regulations, or those dealing with government policy priorities. Despite further concerted efforts to recruit suitably qualified drafters in the mid-1950s, resourcing the function remained challenging. Unattractive conditions of employment were acknowledged as primarily to blame. Direct approaches by Ewens met with some success. In 1963 Dennis Pearce, a new recruit in the Deputy Crown Solicitor's Office in Adelaide accepted a flattering personal invitation from the Parliamentary Draftsman to move to a position 'being held vacant for him' in Canberra. Discovering after he arrived that there were several such positions unable to be filled, Pearce stayed on to make a valuable contribution to the statute book during his five years in drafting. Jeremy Wainwright recalled that when he

Jeremy Wainwright, 13 years into his long drafting career. Administrative Building October 1980. [OPC photograph]

[4] Extract from Drafting Instruction No. 7 of 1964.
[5] E Smith, op.cit, p. 44.
[6] Joint Committee of Public Accounts, 50th Report, 20 October 1960.

applied for a Legal Officer position in the Division in 1966 he was interviewed in the Deputy Crown Solicitor's Office in Melbourne by John Ewens himself, with the then Deputy Secretary to the Department, Clarrie Harders. The selection panel members were delighted to find someone with a genuine interest in the work. Drafting was still regarded as 'the last card in the pack' for many lawyers. Wainwright started work in the Division early in 1967, and went on to have a long and fulfilling career in drafting.



Commonwealth Gazette 4365 No. 76.—13th November, 1952

OFFICES ABOLISHED, CREATED, ETC.

ATTORNEY-GENERAL'S DEPARTMENT.

Appointment effected under Section 47.—Betty Josephine Margaret Douglas Moffat (date of birth 21.8.23) on probation as Legal Officer, Grade 2 (Female) (4927-4979), Third Division, Parliamentary Drafting Division, Administrative Office, Canberra, new office Cert. 52/59, with effect on and from 29th September, 1952.—(Ex. Min. No. 90.)

Division; two of Senior Examiner, Grade 2, Fourth Division; one of Photographer, Fourth Division; one of Reproduction Officer (Plan Printing, &c.), Grade 1, Fourth Division; one of Clerical Assistant, Grade 3, Fourth Division; one of Clerical Assistant (Female), Grade 2, Fourth Division; two of Assistant (Female), Grade 1, Fourth Division; one of Typist (Female), Grade 2, Fourth Division; five of Typist (Female), Grade 1, Fourth Division; one of Junior Assistant, Fourth Division; one of Senior Designer and Cutter (4714-4734-4752), Fourth Division; one of Designer and Cutter (4644-4662-4680), Fourth Division.—(Ex. Min. No. 119.)

The first female drafter, Betty Moffat from Adelaide, was appointed to the Parliamentary Drafting Division in 1952.

Arrangements where a drafter served as Secretary to Representatives of the Government in the Senate, working from an office at Parliament House, were terminated around the end of the 1950s. Louis Legg, who succeeded Les Lyons in the role in 1946, retired in August 1954. Jim Monro was promoted to the Senior Legal Officer position to replace Legg in September the following year, and appeared to have carried out the duties of the Secretary to Representatives role without specifically being designated as such. He was promoted again to Principal Legal Officer in 1961. In 1967 Liberal back-bencher William ('Bill') Wentworth suggested to Attorney-General Nigel Bowen that a drafter should be attached to the House of Representatives to provide drafting services to private Members. Bowen replied that while there was no objection in principle to such arrangements, the difficulties were practical. More efficient service could be provided by drafters working within the Parliamentary Drafting Division, benefiting from wider experience and readier advice and assistance from others. Awkward issues of priorities and confidentiality were likely to arise for a sole drafter working in close proximity to both government and opposition Members. Demands on a drafter placed at Parliament House fluctuated from too many requests at certain times to under-utilisation at others. With drafters already in short supply, out-posting an experienced officer was judged to be not the best use of scarce resources.

Management – Ewens Style

When a certain drafter asked Ewens to clear Bills he would pretend to scan them quickly, or would put them in the bottom drawer of his desk for a day or two. Then he would toss them back across the desk to the drafter, saying 'I can see five errors in that already'. Generally the drafter would take the work away for closer examination, returning to report that he had found at least twice that many errors and corrected them.

A junior drafter was given a memorable induction into the disciplinary processes of the Parliamentary Drafting Division in the mid-1960s. Receiving an abrupt summons from an unidentified voice on the phone he ascertained from a secretary that his presence was immediately required in the Parliamentary Draftsman's office. There he witnessed the severe verbal castigation of a senior drafter who was not his supervisor, before both drafters were summarily sent out – without a word of acknowledgment or explanation to the junior.

Drafters going to Ewens with a Bill to finalise would often be unsettled by an abrupt opening question totally 'out of left field'. Experience proved that the most effective response was a forthright statement to the effect that 'that has nothing to do with this matter'.

One drafter recalled, as a junior, seeking clearance on a Bill that contained a mathematical formula. Declaring that the formula was 'mathematically impossible', Ewens (who was generally astute with figures) told the drafter to go back to the client department to query it. Having confirmed that the formula was correct the drafter reported to Ewens, only to be directed to personally apologise to the instructors for questioning their brief.

The same drafter devoted considerable time and effort, researching State Constitutions and various Interpretation Acts, to find an alternative to the awkward standard expression 'Minister of State of a State'. When Ewens queried the resultant use of 'Minister of the Crown of a State' in the Bill the junior drafter, expecting strong resistance, explained. He was both startled and relieved when Ewens suddenly burst into 'Giuseppe's Song' from Gilbert and Sullivan's *The Gondoliers*[7] – and then agreed to the change.

As the second most senior officer in the Attorney-General's Department, before the separation of the Office of Parliamentary Counsel in 1970, Ewens was appointed to act during the frequent absences of the Secretary. This often involved long periods as acting head of the Department. In this situation it was not uncommon for his signature to appear on minutes and requests to the Secretary from the Parliamentary Drafting Division, and on the ensuing replies.

[7] The lines that John Ewens sang were: 'But the privilege and pleasure, that we treasure beyond measure, is to run on little errands for the Ministers of State.'

Eavesdropping

Before the advent of conference calls, John Ewens had an innovative system installed in his office where an extra headpiece was attached to his telephone. Using this a junior drafter, although unable to participate in the discussion, could listen in on an instructor's briefing. On one occasion while acting Secretary to the Attorney-General's Department Ewens strode into the office then occupied by his temporary replacement, Charles Comans, to find him talking on the phone. Clapping on the headphones, Ewens was just in time to hear a client thank Comans for the pleasure of working with him during the parliamentary session, adding in somewhat colourful terms that the experience was much less stressful than dealing with Ewens.

Price and import controls and rationing of commodities such as petrol remained in place at the end of the Second World War. Aiming to keep inflation in check, the government sought a constitutional change to allow wartime powers controlling rents and prices to continue. With such controls increasingly resented by the public the proposed Constitution Alteration (Rents and Prices) 1947 was comprehensively rejected at a referendum held in May 1948. Voters were also becoming frustrated by shortages caused by industrial action as workers went on strike to try to improve their wages and conditions after the war. Most notable was the seven-week, Communist-led strike by around 23 000 miners in the open-cut coal mines of New South Wales during the winter of 1949. Severe flooding in the region had already diminished fuel supplies. With winter setting in, the community reliant on coal for heating and other essential services, including steam trains, was hard hit by the strike.

Contrary to the provisions of conciliation and arbitration legislation, and flouting the authority of the Joint Coal Board and coal industry tribunals, the industrial action began on 27 June 1949. Urgent drafting was required when the government decided to move quickly to prevent the unions' access to funds 'for the purpose of assisting or encouraging the continuance of' the strike. The deliberately 'drastic' National Emergency (Coal Strike) Bill, introduced at 12.15 pm on 29 June in the House of Representatives, was vigorously debated and passed, with small amendments made in the Senate, before 11.00 pm[8] achieving the aim of passage before the banks opened the next morning. Various union officials who refused to comply with the new law were subsequently arrested, fined and jailed. Ultimately troops were used for the first time to break a peace-time strike, the miners returning to work two weeks after soldiers were sent in at the end of July.

[8] Australia, Senate and House of Representatives 1949, *Debates* vol. 203, , pp. 1643-1657 (Senate), pp. 1673-1724 (House of Representatives).

Drafting for a National Emergency

In response to the coal strike which began on 27 June 1949 the Labor government made a sudden decision to legislate immediately to freeze the funds of the striking unions. John Ewens and Charles Comans were tasked with the overnight drafting of the highly sensitive Bill which became the *National Emergency (Coal Strike) Act 1949* the following day. Ewens took main carriage of the drafting with Comans assisting. Both drafters recalled the events of 28 and 29 June 1949:

> ***John Ewens**: I started [drafting the Bill] at 2 o'clock in the afternoon. At 1 o'clock in the morning I took it to the home of the then Attorney-General Dr Evatt who was seated in bed. There was a 500 watt radiator propped up at the foot of the bed facing up to him. This was in the middle of June. The window was open and for two hours I sat there going through this Bill with him and never in my whole life felt so frozen, sitting in front of that open window. Well then, at 3 o'clock I went back to the House to embody the suggestions that he'd made in a further revise of the draft and for the first time in the whole of my 39 years experience at Parliament House, I found the side door on the Senate side, which was traditionally always open 24 hours a day, closed! I got some stones and threw them up at the window at the house-keeper, just up above the door on the Senate side, and the house-keeper, thinking that I was the Press, threw up the window and, using some expletives that I won't repeat, told the Press to get out of it. Of course I wasn't the Press. I had then the bright idea that my secretary was in the House, physically in the building, so I walked back to West Block – which was open as it should've been – rang her up and said come down and let me in at the side door, which she did and we then completed the draft of this Bill. At 5 o'clock I rang up [the person] in charge of what's now called Management Services, and told him that whoever did the roneoing had to be got out of bed at once and rush back to the office …*
>
> ***Charles Comans:** So the Bill was literally drafted overnight, throughout the night, and at 5 am John laid his pen down and said 'All right, there's the Bill – now you can send it to Comans to attend to the mechanics of it.' I was pretty junior at this time. There wasn't time to print this Bill. It was roneoed; it was passed through both Houses, including apparently a more cooperative Senate than we have today, in a day. Anyway, I had charge of these roneoed copies and raced up to the chamber with them and put them on the front desk and Dr Evatt, who was in charge of it all, came up and said "Where's the Bill?" He grabbed the top copy, hastily went through it and said "Where's page 4?" But there wasn't any page 4; but you know, I later went through the whole pile of copies and there was no other copy that didn't have a page 4. Anyway after the Bill was passed, the next trouble was to get the Royal Assent and it was discovered the Governor-General wasn't home; he was up in Bathurst or somewhere and John might tell you the terrible trouble that followed in getting the Royal Assent, but that was an example of his devotion to duty.*
>
> [Stories told at farewell function for John Ewens, 16 November 1972.]

Banking Bills

Banking legislation caused great political controversy in the late 1940s. In May 1947 the High Court ruled that provisions of the *Banking Act 1945*, which in effect required agencies at all levels of government to use government-owned banks, were unconstitutional.[9] Aiming to bring the banking sector under tighter control the government issued a one-sentence press statement announcing a move to nationalise Australia's banks. Charles Comans later quipped that the resultant newspaper headlines formed the drafting instructions for the bank nationalisation Bill.[10] John Ewens, who first heard of the plan in a confidential meeting with Prime Minister Chifley and Professor Bailey, took carriage of the long and arduous task of drafting a Bill he knew would prove to be contentious. Introduced by Chifley on 15 October 1947 the legislation was hotly debated but ultimately passed as the *Banking Act 1947.* In August 1948 the High Court held that various provisions of the Act were invalid,[11] and a year later the Privy Council in London confirmed the view that the prohibition in section 46 on private banks carrying on business in Australia infringed section 92 of the Constitution. By this time an election was imminent, and strong anti-socialist sentiment provoked by the attempt to centralise banking contributed to the change of government in December 1949.

Disagreement between the Houses of Parliament over Commonwealth Bank Bills in 1950 triggered the second double dissolution of the Commonwealth Parliament. Unable to agree with Senate amendments to a Bill introduced in March 1950, or to persuade the Senate (in which it did not have a majority) to reconsider, the government introduced and passed a second identical Bill in the House of Representatives in October that year. Achieving debate on the Commonwealth Bank Bill [No. 2] 1950 in the Senate proved fraught with difficulty, and the Bill was ultimately referred by the Senate to a select committee on 14 March 1951. Similar disagreements were impacting on the passage of Social Services Consolidation, Communist Party Dissolution and National Service Bills. The Prime Minister's request to dissolve both Houses was granted by the Governor-General on the basis that the Senate's obvious intention to unduly delay passage of the Commonwealth Bank Bill amounted to unwillingness or 'failure to pass' it.[12] Following a general election held on 28 April, the *Commonwealth Bank Act 1951* (reconstituting the Bank's board which had been dissolved in 1945) was passed and assented to on 16 July.

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[9] *Melbourne Corporation v Commonwealth* [1947] HCA 26; (1947) 74 CLR 31.
[10] Farewell to John Ewens, 16 November 1972.
[11] *Bank of New South Wales v Commonwealth* [1948] HCA 7; (1948) 76 CLR 1.
[12] Under section 57 of the Constitution, the Senate twice rejecting or failing to pass the Bill provided the basis for a double dissolution.

Commonwealth of Australia Gazette.

PUBLISHED BY AUTHORITY.

[Registered at the General Post Office, Melbourne, for transmission by post as a newspaper.]

No. 19A.] CANBERRA, MONDAY, 19TH MARCH. [1951.

PROCLAMATION

Commonwealth of Australia to wit. W. J. McKELL, Governor-General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by section fifty-seven of the Constitution of the Commonwealth of Australia it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

And whereas on the fourth day of May, One thousand nine hundred and fifty, the House of Representatives passed a proposed law, namely, a bill for an Act to repeal the *Banking Act* 1947-1948 and to amend the *Commonwealth Bank Act* 1945-1948:

And whereas on the twenty-first day of June, One thousand nine hundred and fifty, the Senate passed the proposed law with amendments:

And whereas on the twenty-second day of June, One thousand nine hundred and fifty, the House of Representatives disagreed to the amendments:

And whereas on the eleventh day of October, One thousand nine hundred and fifty, the House of Representatives, in the same session, again passed the proposed law:

And whereas the Senate has failed to pass the proposed law:

Now, therefore, I, the Governor-General aforesaid, do by this my Proclamation dissolve the Senate and the House of Representatives.

Given under my Hand and the Seal of the Commonwealth this nineteenth day of March, in the year of (L.S.) our Lord, One thousand nine hundred and fifty-one, and in the fifteenth year of His Majesty's reign.

By His Excellency's Command,

ROBERT G. MENZIES
Prime Minister.

GOD SAVE THE KING!

ISSUE OF WRITS FOR ELECTION OF MEMBERS OF THE HOUSE OF REPRESENTATIVES.

IT is hereby notified that, in pursuance of the Constitution, the Commonwealth Electoral Act, the Australian Capital Territory Representation Act, and the Northern Territory Representation Act, His Excellency the Governor-General in Council has been pleased to approve that there be issued on Wednesday, the twenty-eighth day of March, 1951—

(a) Writs for a General Election of Members of the House of Representatives fixing the following dates for the purposes of the said Election:—

For the nominations—Friday, 6th April, 1951.

For the polling—Saturday, 28th April, 1951.

For the return of the Writs—on or before Wednesday, 13th June, 1951;

(b) a Writ for the Election of a Member of the House of Representatives for the Australian Capital Territory fixing the following dates for the purposes of the said Election:—

For the nominations—Friday, 6th April, 1951.

For the polling—Saturday, 28th April, 1951.

For the return of the Writ—on or before Wednesday, 13th June, 1951; and

(c) a Writ for the Election of a Member of the House of Representatives for the Northern Territory, fixing the following dates for the purposes of the said Election:—

For the nominations—Friday, 6th April, 1951.

For the polling—Saturday, 28th April, 1951.

For the return of the Writ—on or before Saturday, 23rd June, 1951.

H. L. ANTHONY
for Minister of State for the Interior.

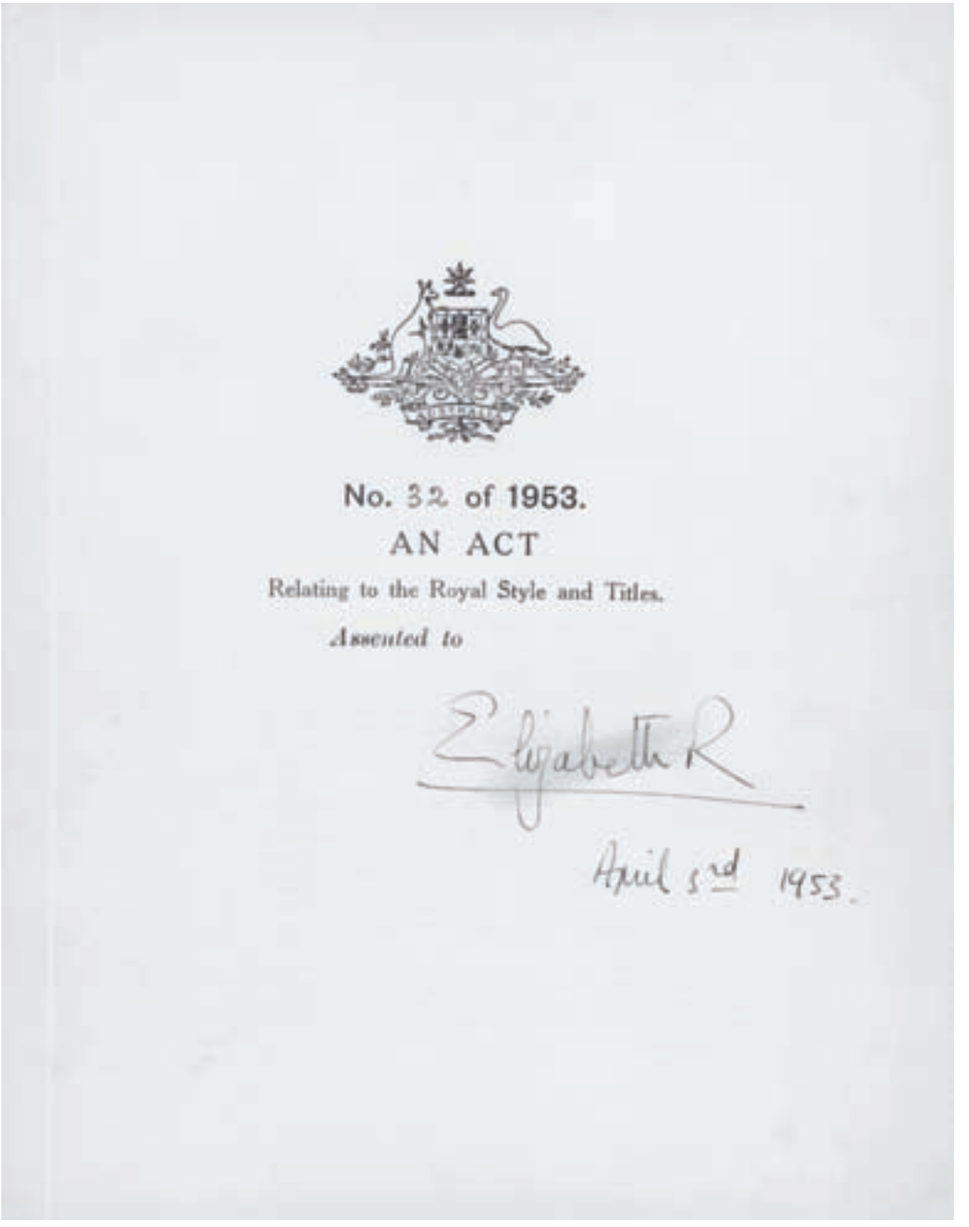
Proclamation relating to the 1951 dissolution of both Houses of Parliament triggered by the Commonwealth Bank Bills. Separate arrangements for Territory representation in the Parliament were reflected in the 'Issue of Writs' notice.

Using monetary policy legislation to control a booming economy, the Government passed significant banking laws later in the decade. Several banking Bills introduced in 1957 aimed to completely change the structure of the Commonwealth Bank and to create another to take over its central banking function. Encountering a protracted passage, but comparatively minor amendments, the Bills were finally passed in February 1959. Restructuring completed, the Reserve Bank of Australia and the Commonwealth Banking Corporation commenced operations on 1 January 1960.

On the World Stage

During the 1940s the British Empire evolved to become the Commonwealth of Nations, a voluntary association of independent states. An influential member of the Commonwealth and increasingly conscious of its Asian neighbours, Australia was a founding signatory in 1950 of the Colombo Plan, a scheme directing bilateral aid to developing countries in South and Southeast Asia. King George VI died on 6 February 1952 and his 25-year-old daughter ascended the throne. Queen Elizabeth II was crowned on 2 June 1953. High-ranking public servants, including former and contemporary senior drafters, were among those awarded a commemorative Coronation Medal. Many Canberrans attended the Coronation Concert featuring the Sydney Symphony Orchestra at the Capitol Theatre, and some went to Sydney to see the celebratory decorations and fireworks display. The *Royal Style and Titles Act 1953* was passed to declare the new monarch's formal title.

Reflecting the relationship between Britain and its dominions expressed in the Balfour Declaration of 1926, each national government followed the practice of adopting its own separate titles – the British Act clearly stating that it applied only to the United Kingdom and the overseas territories actually controlled by its government. Following India's attainment of independence from Britain, the first such Australian Act was passed in 1947 to omit the words 'Emperor of India' from the Royal Style and Title. The 1953 Act adopted the title: 'Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith'. During the first visit of a reigning Monarch to Australia, the Queen and her husband Prince Philip, Duke of Edinburgh, visited Canberra in 1954. Senior officers of the Attorney-General's Department were invited to a garden party at Government House, the Queen's presentation of new colours to the Royal Military College at Duntroon and to a glittering Ball at Parliament House. During the visit Prince Philip officially opened University House, a residential college for staff and graduates of the Australian National University.



No. 32 of 1953.

AN ACT

Relating to the Royal Style and Titles.

Assented to

Elizabeth R

April 5th 1953.

Signature of Her Majesty Queen Elizabeth II on the *Royal Style and Titles Act 1953*.
[Digital copy courtesy of the National Archives of Australia.]

Australia's military involvement in world affairs continued after the Second World War. Strong defence alliances with the United Kingdom and the United States remained in place. From 1950 Australia committed troops to assist the British in defending Malaya and Singapore from communist insurgents. In 1951 Australia signed the Security Treaty between Australia, New Zealand and the United States of America (ANZUS) which committed member countries to consultation in the event of a threat to the territory, integrity, political independence or security of any one of them in the Pacific. After the North Korean People's Army invaded the Republic of Korea on 25 June 1950 the United Nations Security Council passed a resolution urging United Nations members to give military support to South Korea. Australia followed the United States in sending troops to assist.

National service, requiring all males aged 18 to register for a period of training and five years of training in the Citizen Military Forces (serving only in Australia), was introduced under the *National Service Act 1951*. Regular military service remained voluntary. Deemed no longer appropriate to modern military requirements, the national service scheme ended in 1959. Major amendments made in 1960 to the *Crimes Act 1914* introduced tougher definitions and penalties for espionage, sabotage and treason, identified a new crime of treachery and also enabled prosecution of offences under the National Service Act. The *Defence (Visiting Forces) Act 1963* enabled the military to deal with visiting service personnel who broke Australian law.

National Capital Development

Development of the national capital picked up during the 1950s. Its population of around 23 500 at the beginning of the decade swelled to over 55 000 by 1960. Occupation dropped markedly during the school holidays, and the city was very quiet at night. Landmark buildings, such as Parliament House and the War Memorial, and the burgeoning tree-lined suburbs, centred around the Molonglo River, which was crossed by an old wooden bridge at Commonwealth Avenue and two other low-level bridges. Sporadic floods provided some indication of where the future lake would be located. A sandy, wattle covered ridge between Parliament House and the river, a popular lunchtime walking track, was later levelled to plant lawns and the sand used for building. While the Civic Centre on Northbourne Avenue had been built, Kingston was the busiest shopping area, and there was a small centre at Manuka. Many people went to neighbouring Queanbeyan to do their Saturday morning shopping. Various sporting activities were held on the Northbourne, Manuka and Kingston ovals; a golf course and playing fields at Acton; and the Olympic Pool which was completed in 1955. Films showing at the Capitol and Civic picture theatres were well patronised, and concerts and other functions were held at the Albert Hall. The newly built Institute of Anatomy provided a more macabre form of weekend entertainment.

Rough pot-holed roads had to be traversed to get to the snow or the beach – lobbying for improved access to the coast started as early as 1950. Sealed roads led to Melbourne and Sydney, the latter passing Lake George, the sheep paddocks and windmills of which were submerged by water in early 1950 and stayed that way for many years. Intensely cold winters in the region, when public servants tramped across icy paddocks between hostels and the main office buildings at East and West Blocks, were in stark contrast to hot dry summers when bushfires were a constant threat. Fires in early 1952 killed two people and burned much property and stock on the outskirts of Canberra. Buildings and equipment at the Mount Stromlo Observatory were destroyed, and officers in the Attorney-General's Department left work to protect their homes.

Vince Robinson first visited Canberra with relatives around 1958. Jesting that the already articulate little boy may one day be Prime Minister, family members decided they should take his photograph in front of the impressive looking government building nearby. It happened to be the Administrative Building, home to the Attorney-General's Department since 1956. OPC was still located in the Building when Vince joined the Office as a graduate recruit in 1978. [Photograph courtesy of Vince Robinson]

On 29 September 1955 a Senate Select Committee appointed to enquire into the development of Canberra 'in relation to its original plan and subsequent modifications' tabled its report. The Committee's recommendations led to the establishment of a single commission to coordinate and implement planning for the national capital, the affairs of which had been jointly controlled since 1930 by four departments – Attorney-General's, Health, Works and Home Affairs. The *National Capital Development*

Commission Act 1957 established a Commission (the NCDC), which took over the planning and construction of Canberra from March 1958. Still hampered by accommodation shortages, the transfer of public servants from Melbourne proceeded slowly until the end of the decade. Construction of the Administrative Building, begun in 1927, was eventually completed. By then extremely cramped in West Block the Attorney-General's Department moved in 1956 to A-Block, the first completed of the Administrative Building's three sections. Staff from other overcrowded offices relocated around the same time, and the building was fully occupied when members of the Defence group of departments were transferred from Melbourne in 1959.

Work in the Parliamentary Drafting Division

Regulations and ordinances for the Australian territories were part of the work of the Parliamentary Drafting Division which, for reasons of uniformity and quality, continued to draft all forms of subordinate legislation under Commonwealth Acts. The practice was for some officers to be engaged primarily in drafting subordinate legislation. Several drafters in the 1950s had previously worked together on projects relating to territorial laws. Ewart Smith, Doug Croker, Derek Cunningham, Marie Kinsella and Jim Monro were engaged at various stages in reconstructing and reprinting the laws of Papua and New Guinea which had been lost or destroyed during the Second World War, then amalgamating them when the administrations of the two territories were merged. Local rule was established under the *Papua and New Guinea Act 1949* although the unified territory remained under Australian control. Smith later recalled his work with the 'extremely intelligent, youngish' Charles Comans on this Bill as his first encounter with the drafting of Commonwealth legislation.[13] In 1965 a specific cell of three drafters was assigned to work on all legislation relating to the Australian Capital Territory.

Legislation programs for parliamentary sittings were arranged by the Legislation Committee of Cabinet, which considered each Bill in some detail prior to its introduction. The Parliamentary Draftsman or Principal Assistant Parliamentary Draftsman attended meetings to discuss with the Committee any problems it could see with Bills at this stage. Among the documents expected to be presented to the Committee was a memorandum prepared by the Parliamentary Drafting Division specifically pointing out any provisions of a Bill not covered by a Cabinet decision, or in the absence of such provisions stating that the Parliamentary Draftsman had no comment to make. Ewens also adopted the practice of furnishing a memorandum on any other matter with which he thought the committee should be acquainted – using as an example the Queensland Tobacco Leaf Marketing Board Guarantee Bill 1953, where

[13] E Smith, op.cit, p. 28.

he pointed out deficiencies in the power of the Board to deal with the tobacco leaf in question. Also responsible for drafting government amendments to Bills the Parliamentary Drafting Division would only draft additional Bills for private members where official commitments permitted, and on condition that the draft may be shown to the Minister in charge of the function to which the Bill related.

Drafting instructions were expected to be in writing, and received from the Minister or head of the department administering the legislation. With some exceptions, such as Budget proposals, requests for drafting would not be actioned unless the general purpose of the Bill was approved by Cabinet, the instructing department providing proof by way of copies of the Cabinet submission and decision. Clients were advised of the Parliamentary Drafting Division's preference for instructions to be issued only between Parliamentary sittings, for evidence of Treasury's prior approval of related expenditure, and for statements of what was required rather than for a rough draft of a Bill. Parliamentary Drafting Division was responsible for the presentation and printing of formal documents associated with legislation, including notices of motion for leave to bring in Bills and, under section 56 of the Constitution, messages from the Governor-General recommending appropriations. Departments intending to prepare their own notices or messages were cautioned that the wording must accord exactly with the long title of the relevant Bill.

Producing Bills

Printing of Bills was kept under tight control by the Parliamentary Drafting Division. Normally a Bill would be printed in proof form before it was sent to the instructing department. Four copies were provided as a general rule but, conscious of confidentiality, a drafter would 'not encourage too many copies of a Bill leaving his possession'.[14] For the same reason conferences concerning drafting instructions were generally held in the drafter's office, even where the drafter was the junior party. Such precautions were not always sufficient for the instructors. This was the case with the legislation needed to put the Australian Security Intelligence Organisation (ASIO), established by Prime Ministerial directive in 1949, onto a statutory basis. With ASIO proving reluctant to provide the information the frustrated drafter needed 'to proceed beyond the short title' of the Bill, high level consultations were convened to resolve the impasse. Ultimately persuaded, ASIO despatched a senior officer to provide the

[14] JQ Ewens, 'Parliamentary Drafting in the Commonwealth of Australia', *International and Comparative Law Quarterly*, vol. 1, July 1952, pp. 363-368.

information and, by dint of the drafter working over the weekend, the Australian Security Intelligence Organization Bill 1956 was prepared.[15]

Bills were generally drafted in longhand and then typed on a mechanical typewriter. By the end of the 1960s there were still very few electric typewriters available to the drafters. Second Division officers with steno-secretaries could dictate work to be taken down in shorthand before typing. Junior officers working with senior drafters might be invited to dictate a particular Bill on occasion, although not all juniors had the requisite dictation skills. More commonly, hand-written drafts were sent to the Attorney-General's Department typing pool, often with several days spent waiting for their return. Time taken to have typing returned and corrected, to have copies made and settled and to have amendments put through the same processes needed to be factored into the production of Bills. Dictation became more readily available when the number of Second Division drafters was increased in the 1970s, but not everybody used the system. Jeremy Wainwright campaigned for the purchase of some dictating machines – using reel-to-reel cassettes – for junior drafters to share. Pockets made of envelopes were fixed inside manila folders to hold the cassettes when being sent for typing.

Typists needed to be familiar with the layout of legislation. Both drafters and stenographers had to have a thorough understanding of the conventions of dictation – the drafter using abbreviated instructions to indicate such things as parentheses, indented paragraphs and formatting used in Bills. Like other departmental officers, the junior drafters were careful to cultivate good working relationships with the steno-secretaries and the typing pool to ensure that their work remained on the typing priority list. Whole Bills needed to be retyped to incorporate amendments or to correct errors in the draft. This might be done several times before a draft was settled.

Copying of Bills before the printing stage was done on a rotary stencil duplicating machine, typically made by Roneo or Gestetner and often referred to by the manufacturer's name. A stencil, made using a special nib or cut by a typewriter with the ribbon disabled, was prepared on thin waxy paper. Mistakes on the stencil were filled in with correction fluid and then recut, often resulting in a smudge on the copy. In a delicate and frequently messy manoeuvre the stencil had to be fixed, without creasing, to an ink-filled perforated drum. The drum was turned (generally by hand, sometimes by a foot treadle or an electric motor) forcing ink through the stencil to print copies onto sheets of paper fed in by rollers underneath. Drafts ready for printing, if not personally delivered or sent by courier, could be despatched via a pneumatic tube running from the Administrative Building to the government printer in Kingston.

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[15] E Smith, op.cit., p. 40.

Printing was done using rows of lead letters in wooden frames. When anything needed to be changed, whole lines of text had to be pulled out and reset. It was not unknown for a tray of metal letters to be dropped in the process. Drafters asked that such accidents be noted in the margins so the reset sections could be checked especially closely.

First draft Bills were altered in the margins to show deletions or insertions, and redrafts printed in their entirety. Experienced proofreaders could see where amendments had been made – after several reprints the lead letters became blunt at the edges and newer material appeared in sharper type. Proofread by the government printer's staff, printed copies of all legislation were again checked against drafts by a drafter working with an assistant. One skill required of drafters was knowing how to mark up corrections so the printer would understand instructions such as omitting or moving text, changing indentations or using bold or italic font. Typewritten additions were interleaved between the pages, which needed to be separated from the long galley proofs provided by the printer.

Wrong Message

Over the decades, drafters maintained a close relationship with the Government Printing Office, as Bills went through several print runs before they were finalised. On many occasions, drafters personally delivered drafts to the printer at the end of a long night's work. In the days before mobile phones, this involved the drafter telephoning the night supervisor from the police desk near the front door of the printing office. The supervisor would then make a lengthy journey from the back of the rambling building to meet the drafter and collect the manuscript.

Steve Reynolds recalled an occasion when he had woken with a start in the middle of one Friday night, remembering that a Bill he had sent to the printer required a Governor-General's message. Deciding to phone the printer to ask him to ensure that the requisite letter 'M' appeared on the bottom right hand corner of the front page of the Bill, Steve got out of bed to place the call. Much to his dismay, as soon as the supervisor answered and heard the opening words: 'Hello, it's Steve Reynolds' he responded 'I'll be right there!' and hung up the phone to begin the long walk to the police desk, while Steve stood in his own front hall, in his silk dressing gown, holding a dead phone.

[Story told by Hilary Penfold at a farewell to Steve Reynolds on his retirement in March 2001.]

In the early years of the Parliamentary Drafting Division, one drafter was assigned Bill-checking responsibilities. This involved reading the final version of all Bills, before introduction. Accuracy and aspects such as correct cross-referencing within the Bill and to other legislation were painstakingly checked. Doug Croker was so meticulous in his checking that he was assigned the task for some years. Don Thomas did Bill-checking

work between 1963 and 1965. Another drafter, usually the newest recruit to the Division, was designated as a specialised Bills Officer to manage the production of Bills. Steve Bosci and Geoff Kolts were among the drafters who had this role in the late 1950s. Dick Viney, who left the Division to work in the drafting office in Western Australia in 1963, was also the Bills Officer. He was succeeded by Dennis Pearce, who served in the role in 1964 and 1965, then others, including Paul Lehman and Geoff Toms, on a shorter-term basis.

The Bills Officer monitored the process of Bills going to and from the government printer which, after it received and printed the first typed draft, was responsible for producing all revisions. Security of every draft had to be ensured – transport by Commonwealth car drivers was frequently arranged to this end. Formal parliamentary documents relating to financial Bills, messages from the Governor-General and the certificate provided by the Attorney-General to the Governor-General stating that there was no impediment to signing a Bill were all prepared by the Bills Officer. Also responsible for delivering the requisite number of final copies of Bills to Parliament, the Bills Officer served as an aide to the Parliamentary Draftsman, doing some drafting work in this capacity. A review of legal positions in the late 1960s reallocated the administrative aspects of the Bills Officer and Bill-checking work to clerical staff. Drafters continued to supervise the checking of each reprint. The appearance of printed Bills changed around this time too. An increase of 18 per cent in the area of text on each page was achieved by the adoption of B5 size paper from 1967 onwards – the change also affected calculations of page numbers of draft legislation produced each year.

Before starting work on an amending Bill drafters were expected to refer to a suggestions book, in which were recorded legislative provisions noted as requiring amendment or repeal. The most important starting point for drafting amending Bills, or as background to new legislation, was the 'paste-ups'. These consolidations of Commonwealth Acts were maintained by administrative staff in the Division. The traditional method of preparing paste-ups survived until the mid-1990s. Individual pages of the original form of law were photocopied, pasted onto A4 size paper, and bound together. Small amendments were noted on the relevant pages, lines drawn through repealed sections, and amendments typed

Pat Allaway of the Legislation Section, preparing paste-ups of Commonwealth Acts. Administrative Building 1980. [OPC photograph]

and physically inserted. This crucial, constant task was carried out every time legislation was amended, providing full-time work for some staff at various stages. Consolidations were also prepared in other areas of the Attorney-General's Department. Getting progressively messier, paste-ups would eventually be replaced by a full reprint of various pieces of legislation. While searching was time consuming, and locating cross references was particularly frustrating, the manual method had at least one advantage for drafters. In paste-ups they could see both the current state of the legislation and its history of amendment.

Communications and Technology

Emerging technology had little impact on drafting and legislative processes before the 1970s, although the subject matter of laws changed. Paper records were of primary importance, so significant that minutes outlining procedures for their creation and maintenance were signed by the Secretary himself. Some drafters had been trained in the years of paper shortage during the war. Charles Comans recalled his first public service supervisor directing him to turn a pad of foolscap paper upside down before use so the written-on part could be torn off and the rest of the page used later. Departmental files indicated assiduous use of every available piece of paper, much of it poor quality and written or transcribed in inferior ink. Documents reproduced on contemporary thermal copying machines, which used infrared light on expensive and malodorous chemically treated heat sensitive paper, were often faint and faded quickly. In this environment drafters prepared a Bill for the *Television Act 1953*, providing a regulatory framework for the first Australian Broadcasting Commission (ABC) and commercial television networks.

Rapid developments in communications and defence technology were reflected in legislation drafted after the Second World War. Post and Telegraph Acts were joined by Overseas Telecommunications Acts from 1946, and the first Telephonic Communications (Interception) Act in 1960. One of a series of tracking stations opened at Honeysuckle Creek near Canberra in 1967. Australia's first satellite was launched at Woomera rocket range in November that year. Within a decade of the introduction of colour television in Australia in 1975 the ABC was using satellite broadcasting to distribute content nationally. The *United States Naval Communication Station Agreement Act 1963* gave parliamentary approval of an agreement for the establishment of the station at North West Cape in Western Australia in 1967. Various employment conditions for non-naval personnel at the station were governed by later United States Naval Communication Station (Civilian Employees) Acts. In July 1969 the first manned American spacecraft landed on the Moon. Around a decade earlier the Public Service Board began assessing possible uses of electronic data processing in the public service. Initially aiming for quicker and cheaper handling of repetitive office

processes the Board conducted trials and developed Automatic Data Processing (ADP) applications in major administrative departments in the following decades. Primarily professional, the Attorney-General's Department established an ADP Branch in 1972. It operated various small systems on mini-computers, but was primarily focused on developing a computerised legal information retrieval service. The Public Service Board continued to coordinate ADP procurement, staffing and training until its abolition in July 1987.

1950s Drama

Communism was the topic of heated political debate in the 1950s. Wariness of socialism engendered by the Second World War, and contemporary Asian conflicts, was influenced by the many Eastern European refugee immigrants who brought with them deep-seated fears of communism. Mutual distrust and suspicion of countries espousing different political ideologies characterised the prevailing 'Cold War'. Honouring an election promise, in April 1950 the Menzies government introduced the Communist Party Dissolution Bill. One of the most contentious pieces of legislation ever before Commonwealth Parliament, it outlawed the Australian Communist Party and associated organisations, and appointed a receiver to dispose of their property. 'Declared' members of the Party were ineligible to work in Commonwealth employment or defence-related industries, or to hold office in trade unions – the onus being on declared persons to prove they were not Communists. Despite initial opposition in the Senate to the declaring and onus of proof provisions, the Bill was passed without amendment in October 1950.

Immediately the subject of a legal challenge, the *Communist Party Dissolution Act 1950* was declared by the High Court in March 1951 to be unconstitutional.[16] Following the general election triggered by the banking Bill, the question of giving the Commonwealth power to deal with communism was put to a referendum amid particularly rowdy campaigning from civil libertarians. Held on 22 September 1951, the referendum failed only narrowly. Three states each voted for and against, and the margin was less than the number of informal votes cast.

Debate about communism resurfaced on the last night of parliamentary sittings before the next election. On 13 April 1954 the Prime Minister announced the defection of Soviet Embassy Third Secretary, Vladimir Petrov. Seeking political asylum Petrov provided evidence of a spy-ring in which he had been involved. Attorney-General's Department officials participated in the removal of Petrov's wife, Evdokia, from a Moscow-bound plane in Darwin, after she decided to remain with her husband. A Royal

[16] *Australian Communist Party v Commonwealth* [1951] HCA 5; (1951) 83 CLR 1.

Commission was subsequently established to investigate the revelations of espionage. While it did not produce any evidence that warranted prosecutions, many reputations were tarnished in the Commission's hearings between May 1954 and September 1955. Acrimonious division resulting from the Petrov affair and its aftermath was the ultimate catalyst for a split in Labor ranks, various anti-communist factions breaking away to form the Democratic Labor Party.

Another dramatic event, witnessed by drafters at Parliament House in mid-1955, was the appearance of newspaper proprietor Raymond Fitzpatrick and journalist Frank Browne before the Bar of the House of Representatives. On 3 May 1955 Charles Morgan, the Member for Reid, informed Parliament that an article appearing in Fitzpatrick's newspaper, the *Bankstown Observer*, had impugned his honour and challenged his fitness to be a Member of Parliament. Written by Browne, the article alleged that Morgan had been involved in an immigration racket. Charged with a breach of parliamentary privilege, with power derived from section 49 of the Constitution, Fitzpatrick and Browne were sentenced to 90 days in jail. Challenged in the High Court, the action of the House in imposing the penalty of imprisonment was vindicated, the Court holding that Parliament alone could determine what was contempt and how it should be punished.[17] The only people ever imprisoned by a House of the Commonwealth Parliament, Fitzpatrick and Browne were initially held in the basement cell of the then Supreme Court, on the corner of Brisbane Avenue and National Circuit.[18]

Further refined in later court decisions the law of parliamentary privilege was ultimately clarified by the *Parliamentary Privileges Act 1987*, following two decisions in the New South Wales Supreme Court concerning the meaning of Article 9 of the Bill of Rights 1688.[19] Relating to the prosecution of Justice Lionel Murphy of the High Court for attempting to pervert the course of justice, both cases raised the same issue of parliamentary privilege – whether a witness giving evidence to a parliamentary committee could then be examined on that evidence in the course of a criminal trial.

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[17] *R v Richards; ex parte Fitzpatrick and Browne* [1955] HCA 36; (1955) 92 CLR 157.
[18] Originally the Patent Office building, later part of the first Robert Garran Offices. The cell in which Fitzpatrick and Browne were held was later used to store departmental files, including those for OPC.
[19] *R v Murphy* unreported; *R v Murphy* (1986) 5 NSWLR 18.

Public Service Act Amendment

Deletion of the word 'Commonwealth' from its title by the *Statute Law Revision Act 1950* was one of many amendments made to the Public Service Act in the decades following the Second World War. Although in 1950 the three-member Public Service Board (restored in 1947 after operating since 1931 with a sole commissioner) signalled extensive review of the 1922 Act, the size and complexity of the task ultimately delayed for more than four decades a complete overhaul of the legislation governing the service. Frequent amendments in the meantime implemented a range of significant changes to conditions governing public service employment. Imbalances in the age and educational profiles of the public service Third Division, largely caused by recruitment policies favouring returned servicemen, were among the issues addressed by the Boyer Committee, set up in late 1957 to review recruitment standards and processes. Under the *Re-establishment and Employment Act (No. 2) 1958* returned soldier employment preference provisions ceased on 30 June 1960, opening the way for a higher level intake of graduates to the public service. The *Public Service Act 1960* effected implementation of some Boyer Committee recommendations agreed by the government, from May 1961 providing greater flexibility in recruitment processes and placing more emphasis on qualifications for appointment.

By 1966 substantially upgraded graduate recruitment and training processes were in place, including the Administrative Trainee Scheme which provided an entry point to the public service for some future drafters – Kerry Jones, Anne Treleaven, Hilary Manson and Marina Farnan were all 'Admin Trainees'.

Amendments made by the *Public Service Act 1966* protected the rights of officers undertaking compulsory national service and extended existing re-establishment entitlements to those engaged in recent military conflicts. Relaxation of medical standards for appointing physically handicapped applicants, recommended by the Boyer Committee, was introduced progressively until eventually given substantial legislative endorsement by the equal employment opportunity provisions of the *Public Service Reform Act 1984*. Another recommendation, that the barrier to the permanent appointment of married women be removed, was not implemented until 18 November 1966 following passage of the *Public Service Act (No. 2) 1966*. Lower rates of pay for women remained in place until 1972, a year before the *Maternity Leave (Australian Government Employees) Act 1973* introduced maternity leave provisions for federal public servants.

Matrimonial Matters

Empowered under sections 51(xxi) and 51(xxii) of the Constitution to legislate with respect to marriage, divorce and matrimonial causes the Commonwealth did not pass comprehensive laws on these subjects for almost 60 years. Although problems with having greatly varying laws governing such basic personal rights were raised frequently in Parliament and publicly, each State continued to operate with its own jurisdictional rules relating to matrimony and its own grounds for divorce. In 1947 Attorney-General Evatt set up a committee of barristers, including the Member for Balaclava, Percy Joske QC, to prepare a draft matrimonial Bill. This formed the basis of a later draft prepared in extensive consultation with the Law Council of Australia and all law societies, introduced by Joske as a private member's Bill in 1957. During its second reading on 11 April Joske paid tribute to drafter Charles Comans for his 'tremendous amount of care' in preparation of the Bill, saying that he had showed real devotion in his application to 'putting the bill into a form that [would] meet all possible constitutional objections, and would even satisfy the meticulous eye of a chief *Hansard* reporter.'[20]

The Matrimonial Bill sought primarily to bring about reconciliation of married people living apart and estranged. Strongly opposed to separation, it included measures for restitution of conjugal rights, dissolution and nullity of marriage and procedures for maintenance. Provision was made for uniform grounds of divorce, 'in proper cases' only, and for the eventual creation of a federal divorce court. Vigorously debated, and criticised for being overly narrow and conservative, the Bill lapsed after the second reading stage. Sir Garfield Barwick took up the pursuit of uniform marriage and divorce laws after he was appointed Attorney-General in December 1958.

Divorce legislation was ultimately passed first. As with other uniform legislation where administration was to be transferred from the States, the drafter had to consider common practices and inconsistencies between the previous laws of all jurisdictions. Comprehensive explanatory material including a comparative summary of grounds for divorce under various pieces of legislation, and a hand-drawn statistical graph, was prepared to accompany the Bill. Under its provisions the numerous existing fault-based grounds for divorce were reduced and simplified, and divorce provided for after five years of separation. Introduced into the House of Representatives on 14 May 1959 the Matrimonial Causes Bill was described by one commentator as 'a task of stupendous magnitude' and 'a remarkably fine piece of work'.[21] Some provisions met with strong

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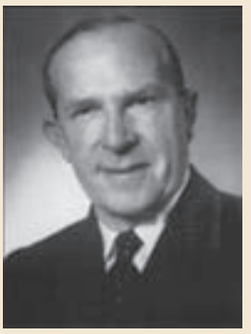
[20] Australia, House of Representatives 1957, *Debates*, vol. H. of R. 14, p. 776.
[21] JHC Morris, 'The Australian Matrimonial Causes Act 1959', *International and Comparative Law Quarterly*, vol. II, July 1962, pp. 647-648.

opposition during debate but the legislation was eventually passed on a conscience vote.

Coming into effect on 1 February 1961 the *Matrimonial Causes Act 1959* provided the first uniform laws governing divorce, nullity and other matrimonial causes throughout Australia. Passed soon afterwards, the *Marriage Act 1961* established national marriage laws, and introduced the concept of authorising persons other than registrars or religious celebrants to officiate at marriage ceremonies. A lengthy and onerous drafting task was further complicated at the last minute by the Attorney-General's decision to include a clause on bigamy in the Bill. Almost immediately challenged in the High Court on constitutional grounds, both the bigamy and legitimation provisions of the Marriage Act were convincingly upheld.[22]



Sir Garfield Barwick was Attorney-General from 10 December 1958 to 4 March 1964. Renowned as a highly skilled lawyer, he had a good working relationship with the senior drafters. He was also a humorous man. Charles Comans recalled one work trip to London around 1950 when Barwick, a leading QC at the time, was also there, involved with a constitutional challenge in the Privy Council. Both Comans and Barwick had tickets to hear Italian tenor Beniamino Gigli sing at the Albert Hall. When Gigli became ill and the concert was cancelled at the last minute, Barwick arranged an alternative form of entertainment. He set up a competition in the street outside, to see who could jump the furthest over a coin.

[Photograph courtesy of Auspic]

[22] *Attorney-General (Vic) v Commonwealth* [1962] HCA 37; (1962) 107 CLR 529.

The Fourteen Matrimonial Commandments

After drafting the 1959 Matrimonial Causes Bill with Ewart Smith, Charles Comans re-drafted the grounds for divorce as verse. Thanking him for a copy of this work, Attorney-General Garfield Barwick added 'At the moment I am basking in the sunlight of good draftsmanship. I feel an awful heel as it is but borrowed plumes in my case.'

[Attorney-General Garfield Barwick to Charles Comans, 10 June 1959.]

The verse		The Act (section 28)
1	Be sure you shun adultery Habitual or desultory. Just one isolated frolic Brings consequences melancholic.	the other party to the marriage has committed adultery
2	Always to your partner cleave, Avoiding absence without leave Two years' desertion is enough To legalize your spouse's huff.	the other party to the marriage has, without just cause or excuse, wilfully deserted the petitioner for a period of not less than two years
3	Not too modest be, or coy, But promptly all your rights enjoy, For if you're loath to consummate Your spouse may tell you — 'it's too late'.	the other party to the marriage has wilfully and persistently refused to consummate the marriage
4	Although your conduct with regard To cruelty may eclipse De Sade, You daren't keep it up too long, A year's enough to make it wrong.	the other party to the marriage has, during a period of not less than one year, habitually been guilty of cruelty to the petitioner
5	Though you may think it rather nice To have variety in vice, Don't copy Sodom and Gomorrah, Nor rape—you'll fill the court with horror!	the other party to the marriage has committed rape, sodomy or bestiality
6	Though you may like to drug or drink You'd better sometimes stop and think! For two years habit at your pastime May mean you've vexed your spouse the last time.	the other party to the marriage has, for a period of not less than two years- (i) been a habitual drunkard; or (ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation...
7	Frequent convictions had for crime And visited with three years' 'time' Will give your wife relief if sought, But only if she's lacked support.	the petitioner's husband has, within a period not exceeding five years- (i) suffered frequent convictions for crime in respect of which he has been sentenced in the aggregate to imprisonment for not less than three years; and (ii) habitually left the petitioner without reasonable means of support;

8	Again if for offence quite grievous You've been in jail the three years previous, You well may find when you're released Your matrimonial rights have ceased.	the other party to the marriage has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition
9	When nagging's broken down your will, Please don't attempt to maim or kill, For if a jury finds you did Your spouse of you may prompt be rid.	since the marriage and within a period of one year immediately preceding the date of the petition, the other party to the marriage has been convicted, on indictment, of- (i) having attempted to murder or unlawfully to kill the petitioner; or (ii) having committed an offence involving the intentional infliction of grievous bodily harm ...
10	If maintenance you find a drain And for two years you drag the chain, To lose your wife may seem quite funny, But don't forget the alimony	the other party to the marriage has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner- (i) ordered to be paid under an order of, or an order registered in, a court in the Commonwealth or a Territory of the Commonwealth; or (ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation;
11	If bade to give conjugal rights Make haste to render these delights: If for a year you shun the bed You well may be no longer wed.	the other party to the marriage has, for a period of not less than one year, failed to comply with a decree of restitution of conjugal rights made under this Act
12	If your spouse just drives you crazy Till your mind becomes quite hazy, With luck you'll have the knot untied When you've been five years certified!	the other party to the marriage- (i) is, at the date of the petition, of unsound mind and unlikely to recover; and (ii) since the marriage ... has been confined for a period of ... not less than five years in an institution where persons may be confined for unsoundness of mind ...
13	If for five years you've lived apart And don't hope for a second start, Freedom is no doubt to your taste But if you seek it — best be chaste!	the parties to the marriage have separated and thereafter have lived separately and apart for a continuous period of not less than five years immediately preceding the date of the petition, and there is no reasonable likelihood of cohabitation being resumed;
14	If your spouse thinks you deceased, Have tidings of your health released, For if for seven years you've tarried, You may be neither dead, nor married.	the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead

Joint Approaches

Eight Members of the House of Representatives and four Senators were appointed to a Joint Select Committee on Constitutional Review in May 1956. Asked to review the Constitution and make recommendations for any amendments it thought necessary, the Committee presented its first report to the Parliament shortly before the election in October 1958, and a more comprehensive report on 26 November 1959. Numerous recommendations were made concerning the composition and function of Parliament, the relationship between the Houses and wide-ranging extensions to the Commonwealth's legislative powers. Creation of new States was considered and one proposal was for reform of the constitutional alteration process itself, suggesting that majorities should be required in only half rather than a majority of the States.

Cross-party agreement achieved within the Committee on Constitutional Review was not shared by all in the Parliament, and State parliaments reacted negatively to both the composition of the Committee and its recommendations. Repeated attempts by the Opposition did not elicit a formal government response to the Committee's report. Two Committee proposals for altering the Constitution – to remove discrimination against Aboriginal people by repealing section 127 and changing the nexus of representatives between the Houses – were drafted in 1965 and the Bills passed by Parliament. Neither was put to a referendum vote until the proposals were amended and new Bills passed early in 1967. Another recommendation, for party parity in the filling of Senate casual vacancies, resurfaced much later and was ultimately approved at a referendum in 1977.

Efforts to achieve greater uniformity in legislation were significantly boosted by the foundation of the Standing Committee of Attorneys-General (SCAG). Formation of the Committee emerged from a series of meetings of Commonwealth and State Attorneys-General held to consider the development of uniform hire purchase laws during the late 1950s. A number of parliamentary drafters attended the first Conference of Commonwealth and State Ministers and Departmental Officers convened to discuss uniform company law in June 1959. Plans for regular meetings and the benefits of a joint approach to common problems were discussed at this meeting, which was followed by several others from 1959 to 1961. Drafters from various jurisdictions attended the conferences, and participated in both the Committee of Officers on Uniform Company Law and the associated Drafting Committee formed to work on the project.

Several parliamentary drafters also attended the June 1961 Conference of the Standing Committee of Commonwealth and State Ministers to Consider Uniform Law Proposals. Ministers broadened the agenda to include proposals relating to a number of other areas of law, and in August 1961 the group was renamed the Standing Committee of

Attorneys-General of the States and the Commonwealth. New Zealand first attended a Standing Committee meeting in 1963, contributing to the discussion on uniform maintenance legislation. After 1968 the New Zealand Attorney-General, and later the Minister for Justice of Papua New Guinea, became regular attendees of meetings as observers. The Northern Territory attended with observer status from June 1976, and became a full member of SCAG in 1978.

A forum for Ministers to discuss matters of mutual interest, SCAG provided the means to adopt a uniform approach to appropriate matters falling within common areas of administrative responsibility. Its objectives were practical. Much legislative reform could be achieved through cooperation without the need for any constitutional amendment. From the beginning Commonwealth drafters, led by Ewens, made a major contribution to the legislative work resulting from SCAG deliberations. Uniform hire purchase laws were enacted throughout Australia in the early 1960s. Wide-ranging areas benefiting from the cooperative approach included company law, censorship law and development of a Model Criminal Code.

Uniformity in corporations law remained elusive. With constitutional limitations lingering from the *Huddart Parker* High Court decision in 1909,[23] any standardisation to remove the inconvenience of diverse legislative requirements needed to be attained through Commonwealth-State cooperation rather than passing a federal law. Work begun by SCAG in 1961 was directed at developing uniform corporate regulation through co-operative State and Territory legislation. While the legislation itself went largely unreformed, reaching agreement between the diverse political views and provincial interests of seven governments and their respective business communities was a notable achievement. Companies Acts based on Victorian laws were passed by all states in the early 1960s, and Ordinances by the Commonwealth for the Australian Capital and Northern Territories. The Australian legislation was later used as a model for laws in Malaysia and Singapore.

Not easy to maintain, national uniformity was gradually eroded as the States made individual amendments to their legislation. A mineral boom in the late 1960s saw many new companies floated and resulted in hectic trading on the stock exchange. State securities industry legislation was enacted to extend regulation of the industry and create new offences. In August 1967 SCAG appointed a three-person committee, chaired by Sir Richard Eggleston, to enquire into and report on the extent of protection afforded to the investing public by the uniform companies laws. Many of the committee's recommendations relating to accounts, audit, share market trading and takeovers were implemented in legislation in the early 1970s, and its principles guided

[23] *Huddart, Parker & Co. Pty Ltd v Moorehead* [1909] HCA 36; (1909) 8 CLR 330.

the eventual creation of a corporate regulating body established under the *Australian Securities Commission Act 1989*. The High Court judgement in *Strickland v Rocla Concrete Pipes Ltd* in 1971[24] unanimously rejected the 1909 *Huddart Parker* decision, opening the way for development of aspects of Commonwealth companies law. However, constitutional difficulties relating to trading corporations highlighted by the *Strickland v Rocla* decision necessitated the repeal of the *Trade Practices Act 1965* and drafting of the Restrictive Trade Practices legislation which was passed by the end of 1971.

Troublesome Times

Created to combat the threat of spreading communism, the South East Asian Treaty Organisation (SEATO) was joined by eight member countries in 1954. The Treaty bound America, Australia, New Zealand, Britain, France, The Philippines, Thailand and Pakistan to come to each other's aid in the event of external aggression. Following the United States in responding to a request from the South Vietnamese government in 1962 Australian military advisers were sent to that country to help train government troops facing an invasion from the communist North. Australia's involvement in the Vietnam War began with the despatch of Royal Australian Air Force Caribou transports to Vung Tau in August 1964, and the deployment of a battalion of combat troops in mid-1965.

A new peacetime conscription scheme was introduced under the *National Service Act 1964*. This required 20-year-old males chosen by ballot to serve two years in the Australian Army, including overseas, and three years on the active reserve list. The Defence Act was amended in May 1965 to provide that national servicemen could be obliged to serve overseas, and conscripts were sent to Vietnam from March 1966. National Service could be avoided by joining the Citizen Military Forces, claiming a student deferment, or demonstrating conscientious objection to 'all', not just one specific, war. Australia's military commitment to South Vietnam reached a peak of around 8 000 service personnel in late 1967.

Public opposition to the Vietnam War and to conscription swelled late in the decade. One vocal group was the 'Save our Sons' organisation – protesting on behalf of men aged under 21 who were not eligible to vote until amendments to the *Commonwealth Electoral Act 1918* were made in 1973. Anti-conscription protests became increasingly radical, and occasionally violent, and several high-profile controversies embarrassed the government. Opposing any increase to the Australian contingent, Prime Minister John Gorton, against Army advice, began withdrawing from Vietnam at the end of 1970 by not replacing the 8th Battalion when it returned from its tour of duty. Honouring an

[24] *Strickland v Rocla Concrete Pipes Ltd* [1971] HCA 40; (1971) 124 CLR 468.

election campaign promise, the new Whitlam Labor government made the ending of conscription one of its priorities in late December 1972, exempting everyone from conscription under existing legislation, freeing men incarcerated for refusing conscription and ordering home the remaining troops. Australian participation in the war in Vietnam was formally declared at an end by a proclamation issued by the Governor-General on 11 January 1973. The last platoon, guarding the Australian embassy in Saigon, was withdrawn in June that year.

Dealing with Davison

Drafting of bankruptcy laws often involved the resolution of tricky legal issues. Following the High Court decision in *The Queen v Davison* in 1954, which held that a Registrar in Bankruptcy had no authority under the Constitution to exercise a judicial function by making sequestration orders, the *Bankruptcy Act 1924* had to be amended. Not only did the offending section have to be repealed and replaced, but bankruptcy orders made by Registrars and Deputy Registrars since the Commonwealth bankruptcy administration commenced on 1 August 1928 needed to be validated as a matter of urgency. Appreciating the drafting challenges inherent in this exercise, Senator Nicholas McKenna heaped praise on the drafter who prepared the validating legislation in the Bankruptcy Bill 1954.

> *I sympathize greatly with those who were faced with the problem of drafting a Bill to validate all that had gone on, and all of which had been declared by the High Court to be quite irregular. It was not at all an easy matter. I think great ingenuity was shown by having recourse to the plenary power granted by the Constitution over bankruptcy and insolvency and avoiding the danger of Parliament itself seeking directly to validate the acts of registrars and deputy registrars. If the latter course had been followed … the Parliament would have done exactly what the High Court said the registrars and deputy registrars had done. We would, in effect, as a legislature, be seeking to exercise a judicial power. That trap, the draftsman has very carefully avoided. … [T]he Government and the draftsman have shown quite a deal of ingenuity in getting over the difficulty by resisting the temptation to allow the Parliament itself to exercise judicial power. They have done exceedingly well in a difficult situation.*
>
> [Commonwealth of Australia Parliamentary Debates, Senate 3 November 1954, pp. 1172-1173.]

Drafters grappled with some especially onerous Bills in the 1960s. Urgent legislation was required in 1961 to provide long-service leave for members of the stevedoring industry unions, who were frequently engaged in highly disruptive industrial action at the time. Various complications prolonged preparation of the Bill. After more than three intensive weeks of drafting and redrafting, Ewart Smith, the drafter, literally collapsed with exhaustion. The Bill, which had been on the verge of completion, was passed as the *Stevedoring Industry Act 1961*.

Recovered, and fortified by a personal apology from the members of the Legislation Committee, Smith returned to the task of drafting a Bill for a new Bankruptcy Act. Although he admitted that he had 'groaned' when allotted this Bill, it being an enormous task and his knowledge 'abysmally thin', Smith described it one of the three most absorbing subjects he had dealt with in parliamentary drafting: 'marriage, divorce and bankruptcy – sounds an inevitable trio!'[25]

Charles Comans being presented with his OBE by the Administrator, Colonel Sir Henry Abel Smith. Government House 1965. [Photograph courtesy of Charles Comans]

Drafted over six years and finally passed in May 1966, the *Bankruptcy Act 1966* resulted from the first major review of the legislation since Commonwealth bankruptcy administration had begun operating in 1928. John Ewens was a member of the Bankruptcy Law Review Committee, chaired by Sir Thomas Clyne, which painstakingly examined the bankruptcy laws between March 1956 and December 1962, ultimately recommending that a new Act be passed. When introduced in 1965 the Bankruptcy Bill, comprising 161 pages and 315 sections, became the largest single Bill ever presented to Parliament up to that time. The record was broken later the same year by a 528-page Customs Tariff.

The third Australian Prime Minister to die in office, Harold Holt, disappeared while swimming off Cheviot Beach in Victoria on 17 December 1967.

[25] E Smith, op.cit., p. 50.

Stevedoring Bill

After a particularly torrid time drafting the Stevedoring Industry Bill 1961, Ewart Smith wrote of the experience in his memoirs:

> *For 23 days and nights, public holidays included as the period covered Easter, I went on drafting and redrafting. Then Ewens and I arranged to meet at the Parliamentary Draftsman's Office on the final Sunday afternoon, when he'd have a last look over the Bill; hopefully it would go to the Parliament the next week. But I never made it. I reached the garage door and couldn't lift my arm to open it. My body had finally rebelled and my wife watched in alarm as I stumbled back into the house and collapsed.*

On the Bill's final night in the Senate the Minister, William McMahon, hosted a party for those involved with its preparation. The happy mood of the occasion was encouraged by some potent French champagne which was pressed upon the momentarily unwary drafter. All involved overlooked the need for him to be present in the Senate after dinner, to advise on any questions which might arise on the controversial Bill. In a rare state of inebriation and incoherence Ewart Smith, supported on either side by John Ewens and Charles Comans, managed to take his place in the officers' section of the chamber. Taking out his papers he was horrified to realise he could not read the blurred pages. Doing his utmost to look intelligent, he fortunately was not called upon during the all-night sitting and the Bill was eventually passed.

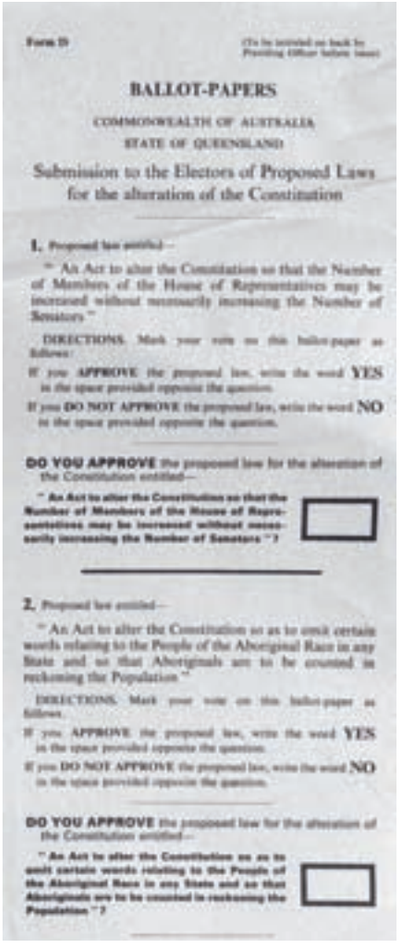
[The Australia Card: the story of its defeat, pp. 45-48.]

1967 Referendum

Amending section 51(xxvi) and deleting section 127 of the Constitution remained the focus for Aboriginal rights campaigners in the mid-twentieth century. In February 1958 action groups from all the mainland states, which had been petitioning for constitutional change, formed a national body to lobby for Indigenous rights. Aiming to secure equal citizenship rights for Aboriginal people through the repeal of discriminatory State laws and amendments to the Australian Constitution, the Federal Council for Aboriginal Advancement (FCAA) launched a national petition which was presented to Parliament in September 1958. Constitutional change was on the political agenda by the following year but progressed slowly. One of the recommendations made by the Joint Select Committee on Constitutional Review in 1959 was the repeal of section 127 – relating to the exclusion of Aboriginal people from the census. In 1961 the Select Committee on Voting Rights of Aborigines recommended that Indigenous people be allowed to vote in federal elections, prompting the necessary amendments in 1962 to the *Commonwealth Electoral Act 1918*. However, enrolling to vote was not

made compulsory, and Indigenous people in Queensland remained unable to vote in State elections until 1965.

A year-long national petition campaign during 1962 and 1963 culminated in a meeting between a FCAA deputation and Prime Minister Menzies late in 1963. Opposition Leader Arthur Calwell introduced a private member's Bill in May 1964. Proposing to repeal section 127 and to omit the words 'other than the Aboriginal race in any State' from section 51(xxvi), the Bill did not succeed. On 11 November 1965 Menzies introduced a Bill which was intended to delete section 127 of the Constitution.



Form D

BALLOT-PAPERS

COMMONWEALTH OF AUSTRALIA
STATE OF QUEENSLAND

Submission to the Electors of Proposed Laws for the alteration of the Constitution

1. Proposed law entitled—

"An Act to alter the Constitution so that the Number of Members of the House of Representatives may be increased without necessarily increasing the Number of Senators"

DIRECTIONS. Mark your vote on this ballot-paper as follows:

If you APPROVE the proposed law, write the word YES in the space provided opposite the question.

If you DO NOT APPROVE the proposed law, write the word NO in the space provided opposite the question.

DO YOU APPROVE the proposed law for the alteration of the Constitution entitled—

"An Act to alter the Constitution so that the Number of Members of the House of Representatives may be increased without necessarily increasing the Number of Senators"?

2. Proposed law entitled—

"An Act to alter the Constitution so as to omit certain words relating to the People of the Aboriginal Race in any State and so that Aboriginals are to be counted in reckoning the Population"

DIRECTIONS. Mark your vote on this ballot-paper as follows:

If you APPROVE the proposed law, write the word YES in the space provided opposite the question.

If you DO NOT APPROVE the proposed law, write the word NO in the space provided opposite the question.

DO YOU APPROVE the proposed law for the alteration of the Constitution entitled—

"An Act to alter the Constitution so as to omit certain words relating to the People of the Aboriginal Race in any State and so that Aboriginals are to be counted in reckoning the Population"?

Ballot paper for the 1967 referendum. [Digital image courtesy of National Archives of Australia]

Amendments to section 51(xxvi) were not put forward on this occasion, on the premise that the provision as it stood prevented the Commonwealth from enacting any laws exclusively for, or perceived to be detrimental to, Aboriginal people. Renamed in 1964 to include Torres Strait Islanders in its title, the FCAATSI mounted a silent vigil protest outside Parliament House, holding banners asking for amendment to section 51(xxvi). Although by the end of 1965 the legislative way was opened to hold a referendum on the repeal of section 127, in January 1966 this was deferred by incoming Prime Minister Harold Holt to enable a rethink on section 51(xxvi).

In March 1966 Bill Wentworth introduced a private member's Bill proposing the deletion of both sections 127 and 51(xxvi) and the insertion of a new provision to prevent the Commonwealth or the states from legislating on the basis of race. Despite widespread support for this Bill, and a growing international focus on race relations and civil rights, it did not succeed. All mention of Aboriginal disqualification was removed by the *Social Services Act 1966* from 30 September 1966. Two weeks later Australia signed the International Convention on the Elimination of all Forms of Racial Discrimination.

Persuaded by the petitions and representations received on the issue, Cabinet decided early in 1967 to proceed with the alteration to section 51(xxvi). Introduced on 1 March 1967 by Prime Minister Holt the Constitution Alteration (Aboriginals) Bill was passed by the House of Representatives the same day with the support of all members present, and unanimously agreed by the Senate a week later. A referendum was scheduled for 27 May. With bipartisan support for the proposals, an official 'no' case for the referendum was not mounted and it was the FCAATSI rather than the Government which conducted a concerted 'yes' campaign. Referendum campaign slogans used included 'If to Aborigines you would be fair, put a YES in the bottom square'; and the simple 'Right wrongs, write Yes'. Voters were asked if they approved the proposed alteration of the Constitution 'to omit certain words relating to the people of the Aboriginal race in any state so that Aboriginals are to be counted in reckoning the population'. The overwhelming 'yes' vote (90.77%) was the highest ever recorded at an Australian referendum. A convincing majority was achieved in all States. Residents of the Australian Capital and Northern Territories were ineligible to vote in referenda at this time, preventing thousands of Aboriginal people from supporting their own cause. The concurrent 'nexus' referendum on the controversial issue of altering the balance of numbers in the House of Representatives and the Senate was unsuccessful.

Capital Growth

Influenced by both the government's push to complete the move of public servants from Melbourne and the work of the NCDC, Canberra grew rapidly. With growth exceeding 50 per cent every five years from 1955, the population reached 250 000 by 1985.[26] Numerous flats built near the civic centre from 1955, and a number of new low-tariff hostels in the 1960s, provided additional accommodation. Construction of the Russell Hill complex began to house the defence departments. Of particular interest to drafters was the opening of a new Government Printing Office at Kingston in August 1963. City Hill was developed with the addition of Law Courts, with the Supreme Court sitting in the new building for the first time on 9 May 1963. The first church service to mark the opening of the Law Year in Canberra was held at St John's Church in Reid on 12 February 1962. Departmental lawyers were active participants and often leaders in these events. Separate denominational services were celebrated until 1970 when the first ecumenical service was held in the open air outside the Law Courts.

Catering for flourishing entertainment and cultural activities, the Canberra Theatre opened in 1965. Other notable new buildings included the copper-domed Australian Academy of Science, opened in 1959, and an official home for the National Library

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[26] ACT population figures from the Australian Bureau of Statistics, *Year Book Australia 1988*, 'A Pictorial History of the Australian Capital Territory'.

which moved in from several other locations in 1968. Pursuing the development of a truly national collection since its inception as the Commonwealth Parliamentary Library in 1901, the library was formally established as a separate body by the *National Library Act 1960*. Charles Comans drafted the National Library Bill – closely monitored by Harold White who was joint Commonwealth National Librarian and Commonwealth Parliamentary Librarian between 1947 and 1960, and after passage of the Act was appointed National Librarian until his retirement in 1970.

Extending beyond the original design for Canberra, new districts were developed: Woden from 1964, Belconnen from 1967 and Tuggeranong from 1973. Services and access to the capital were improved. The Snowy Mountains Hydro-electric Authority generated its first power from Guthega in 1955, with the first major power station commencing operation in 1959, the year the 25.5 kilometre long tunnel under the Snowy Mountains was completed. An air-conditioned diesel train began running between Sydney and Canberra in 1955, and a standard gauge railway line linked Victoria and New South Wales from 1962 making travel to Melbourne much simpler. One indication of increasingly common air travel was the drafting of the *Crimes (Aircraft) Act 1963,* aimed at offences committed on aircraft.

Long promised, Lake Burley Griffin was finally created in the 1960s. It was formed along the course of the Molonglo River by the construction of Scrivener Dam near Government House. Recreational facilities on land which was to be submerged were relocated. Keen golfers among the drafters and their families benefited from the establishment of the Royal Canberra Golf Club's[27] new course at Westbourne Woods in 1962. At its second site since being moved from the city area in 1922, the nine-hole course at Acton had previously shared its space with the racecourse. Specific challenges of the course included having wayward balls avoid the river, and problem lies because of hoof prints on the fairways. Bridges across the lake bed at Kings and Commonwealth Avenues were built before the dam was completed and its valves closed in September 1963 to allow the lake to form. As the area had been in drought for some years this did not happen until good rain finally fell in April 1964. The Captain Cook memorial water jet was added to the lake in 1970. On Australia Day 1971, a disastrous flood in the Woden Valley killed seven people, injured 15 and affected hundreds more residents of recently established suburbs.

[27] 'Royal' status was granted by King George V in 1933.

This photograph of the Attorney-General's Department staff with its incoming and outgoing Ministers was taken to mark the changeover from Sir Garfield Barwick to Billy Snedden in March 1964.

[Photograph courtesy of the National Library of Australia.]

1ST ROW: (from left) WD Fanning, GP Byrne, JQ Ewens, Hon.BM Snedden, Sir K Bailey, Sir G Barwick, EJ Hook, HE Renfree, RB Hutchison, LD Lyons

2ND ROW: (from left) P Brazil, EJ Mills, H Harris, DS Thomas, HA Finlay, L Naar, KS Edmunds, RM Bannerman, ARM Watson, NT Sexton

3RD ROW: (from left) SF Parsons, SN Summers, CK Comans, WA Johnson, MC Sedwick

4TH ROW: (from left) BC Quayle, GJF Yuill, DC Pearce, EM Haddrick, GK Kolts, A Biveinis, CH Morrison, AW Wynne, CW Harders, J Johnston, WS Frey

5TH ROW: (from left) MR Sandor, E Wright, LJ Curtis, MW James, G Baird, FJ Hawkins, N Good, R Hiscock, BJ O'Donovan, PR Loof, J Evans

6TH ROW: (from left) DJ Rose, RJ King, RJ Withnall, DR Croker, LD Hort, S Robison, RJ Harmey, EH Tudor, J Monro, E Smith, HT Bennett, HB Connell, C Weston, FJ Mahony, RL Odlum, DR Anderson, GJ Charlton, JO Ballard

Sundry Statutes

Australia's rapidly changing social and economic environment and global relationships were reflected in a diverse range of legislation. Wide-ranging reform of the tertiary education sector was guided by the report of a committee chaired by Sir Keith Murray in 1957. Between 1958 and 1975 the number of universities in Australia more than doubled, and student enrolments almost trebled. The *Australian Universities*

Commission Act 1959 established a statutory body to advise the Commonwealth Government on university matters. Numerous States Grants Acts were drafted to provide funding for all levels of education. The *Currency Act 1965*, one of Dennis Pearce's favourite drafting achievements, repealed previous coinage laws and implemented the conversion of Australia's currency from pounds, shillings and pence to dollars and cents from 14 February 1966.

As part of ongoing strategies to develop Australian art and media the advisory Australian Council for the Arts began operating in 1968 and the National Film and Television Training School was established in 1973. Supporting the film and television industries the *Australian Film Development Corporation Act 1970* established a body to encourage production of Australian cinema and television films and their distribution within and outside Australia. In 1959 a committee, chaired by former Attorney-General Senator John Spicer, reported on its consideration of 'alterations desirable' in copyright law, leading to significant reform in this area. Previously relying on the provisions of imperial copyright law, Australia enacted its own substantive intellectual property legislation in the *Copyright Act 1968*.

Reflecting greater independence in other areas, appeals from the High Court to the Privy Council were limited, and those from other federal and supreme courts abolished, by the *Privy Council (Limitation of Appeals) Act 1968*. Although not successful until 1973, Britain's plans to enter into common market arrangements in Europe impacted on former imperial trade preferences. Australia established a new Department of Trade early in 1956 and signed its first bilateral trade agreements, with the United Kingdom and Japan, that year. A new body created by the *Australian Industry Development Corporation Act 1970* helped finance Australian companies to develop the country's industries. Late in the decade the Federal Government under Prime Minister John Gorton rebuffed lobbying by State governments to allow them to re-enter the income tax field. Amendments to social services legislation enhanced health care for poorer families and increased various welfare allowances around this time.

Prompt drafting and urgent passage of a Navigation Bill was demanded early in 1970 to respond to a marine disaster. On 3 March 1970 a Liberian tanker, the *Oceanic Grandeur,* struck an uncharted rock in the Torres Strait while en route from Indonesia to Brisbane. Eight of the ship's 15 cargo tanks were ruptured, spilling crude oil on impact and more copiously a week later during attempts to remove the oil. The incident, which became a catalyst for development of a National Contingency Plan, found Australia both legislatively and administratively unprepared to deal with a major spill in the marine environment. Among other issues, the existing law did not place any responsibility on the ship to meet any response costs. Introduced into the House of Representatives at 4.37 pm on 18 March 1970, and the Senate at 8.00 pm, the Navigation Bill aimed to provide necessary powers to deal with vessels and cargoes in cases of pollution or

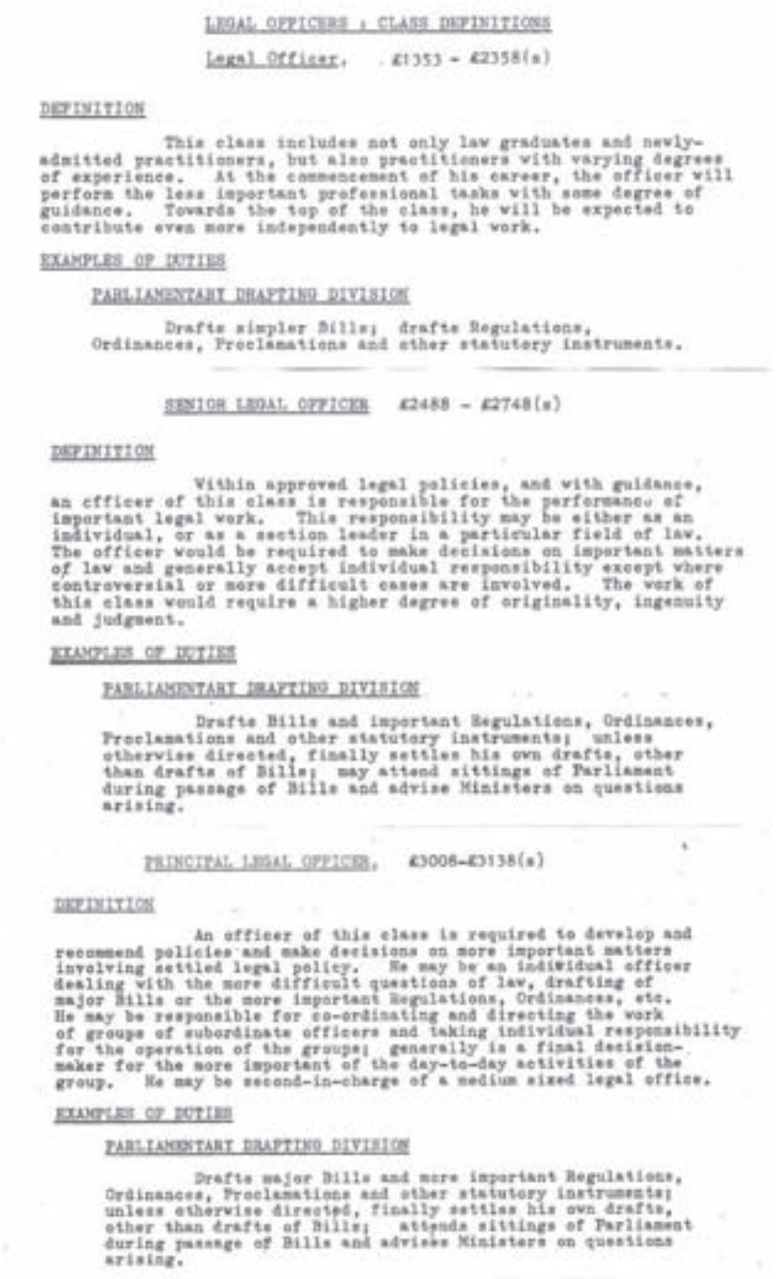
threat of pollution to the Australian coast or coastal water by oil. Amended in the Senate to insert a 'sunset' clause, giving the Government six months to deal with the emergency before submitting further navigation legislation for fuller consideration, the Bill was returned to the House at 3.25 pm on 19 March, passed, and assented to the next day. Navigation laws drafted later in the year received assent on 11 November, coming into effect as the *Navigation Act (No. 2) 1970*.

Reviewing Resources

Resourcing problems within the Parliamentary Drafting Division came to light in a Joint Committee of Public Accounts (JCPA) investigation in 1960. The Committee found that delays in promulgating regulations prescribing new rates of pay and allowances for defence forces had resulted in unlawful payments being made. In his evidence to the Committee John Ewens, acting Secretary to the Attorney-General's Department, stated that there was a three to four month delay in starting new drafting projects unless some special priority was attached to the work. Staffing in the Parliamentary Drafting Division was well below establishment and had been depleted for some years. Stretched for experienced legal resources generally, the Department did not give priority to drafting. Difficulties recruiting competent drafters were exacerbated by long drawn-out staffing processes under rigid Public Service Board control. Ewens noted that while it had been advised that conditions of employment were not attractive to skilled drafters, and trained people were being lost to other departments or to outside employment, the Board had determined that there was no justification for higher rates of pay.

In October 1961, South Australian Senator Keith Laught commented in Parliament on problems faced by the Parliamentary Draftsman, noting that there had been some criticism of delays in producing public service regulations. Judging the drafters to be efficient, Senator Laught believed there were not enough of them to cope with recent enormous increases in the volume and ambit of legislation. He suggested there should be specialist recruitment and training schemes for drafters, including a formal course at the Australian National University and some overseas development opportunities.[28]

[28] Australia, Senate 1961, *Debates* vol. S.20, pp. 1185-1186.



LEGAL OFFICERS : CLASS DEFINITIONS

Legal Officer. £1353 - £2358(a)

DEFINITION

This class includes not only law graduates and newly-admitted practitioners, but also practitioners with varying degrees of experience. At the commencement of his career, the officer will perform the less important professional tasks with some degree of guidance. Towards the top of the class, he will be expected to contribute even more independently to legal work.

EXAMPLES OF DUTIES

PARLIAMENTARY DRAFTING DIVISION

Drafts simpler Bills; drafts Regulations, Ordinances, Proclamations and other statutory instruments.

SENIOR LEGAL OFFICER £2488 - £2748(a)

DEFINITION

Within approved legal policies, and with guidance, an officer of this class is responsible for the performance of important legal work. This responsibility may be either as an individual, or as a section leader in a particular field of law. The officer would be required to make decisions on important matters of law and generally accept individual responsibility except where controversial or more difficult cases are involved. The work of this class would require a higher degree of originality, ingenuity and judgment.

EXAMPLES OF DUTIES

PARLIAMENTARY DRAFTING DIVISION

Drafts Bills and important Regulations, Ordinances, Proclamations and other statutory instruments; unless otherwise directed, finally settles his own drafts, other than drafts of Bills; may attend sittings of Parliament during passage of Bills and advise Ministers on questions arising.

PRINCIPAL LEGAL OFFICER. £3008-£3138(a)

DEFINITION

An officer of this class is required to develop and recommend policies and make decisions on more important matters involving settled legal policy. He may be an individual officer dealing with the more difficult questions of law, drafting of major Bills or the more important Regulations, Ordinances, etc. He may be responsible for co-ordinating and directing the work of groups of subordinate officers and taking individual responsibility for the operation of the groups; generally is a final decision-maker for the more important of the day-to-day activities of the group. He may be second-in-charge of a medium sized legal office.

EXAMPLES OF DUTIES

PARLIAMENTARY DRAFTING DIVISION

Drafts major Bills and more important Regulations, Ordinances, Proclamations and other statutory instruments; unless otherwise directed, finally settles his own drafts, other than drafts of Bills; attends sittings of Parliament during passage of Bills and advises Ministers on questions arising.

Description of duties in the Parliamentary Drafting Division, following a review of the legal structure in the Attorney-General's Department in 1962.

JCPA recommendations that immediate action should be taken to resolve the unsatisfactory situation and ensure the expeditious drafting of regulations coincided with an arbitration claim and structural review, bringing about major organisational changes in 1962. Public service conciliation and arbitration machinery was transformed by legislation in the 1950s. Amendments contained in the *Public Service Arbitration Act 1952* permitted 'public interest' appeals against decisions of the Public Service Arbitrator. More significant change followed the 1956 decision in the Boilermakers case[29] where the High Court held that it was unconstitutional for the Commonwealth Court of Conciliation and Arbitration to be vested with both arbitral and judicial powers. Affirming the constitutional separation of legislative and judicial powers the *Conciliation and Arbitration Act 1904* was amended to establish two separate bodies: the Commonwealth Conciliation and Arbitration Commission[30] to handle conciliation and arbitration matters; and the Commonwealth Industrial Court[31] to exercise judicial power. In June 1961 the Conciliation and Arbitration Commission awarded salary increases to base-grade engineers which, to achieve equity, departed from traditional standard salary patterns.

This landmark judgement prompted extensive examination and substantial restructuring of other professional groups. Legal officers were among the first to be reviewed. Since the major reclassification in 1948, only ad hoc adjustments had been made to the organisation of the Attorney-General's Department. A claim covering most of the Department's professional establishment, lodged by the Commonwealth Legal Professional Officers' Association in 1958, was not listed for hearing until late in 1961. While hearings proceeded, long-standing problems with recruitment and retention of appropriately qualified legal staff, and complicated classification structures, were dealt with in a joint review by the Department and the Public Service Board. A partial reorganisation of the Department's central office begun some months earlier led to a more comprehensive overhaul and general reclassification of the entire legal officer structure.

Admission as a legal practitioner, together with some practical legal experience, was formalised as a prerequisite for appointment. Three levels of base-grade Legal Officer positions were merged into one long-ranging grade. (Proving still unattractive to new recruits, this was shortened again in 1965.) Salaries for the base-grade and for the supervisory and specialist Senior Legal Officer and Principal Legal Officer classifications set by the Board in May 1962 were lower than the Attorney-General's Department suggested, and were increased by the Arbitrator in October that year. The Department's

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[29] *R v Kirby and others; ex parte the Boilermakers' Society of Australia* [1956] HCA 10; (1956) 94 CLR 254.
[30] Renamed the Australian Conciliation and Arbitration Commission in 1973.
[31] In 1977 this became the Industrial Division of the Federal Court of Australia.

legal areas were rearranged. It was determined that drafting of subordinate legislation should remain the responsibility of the Attorney-General's Department and that any legal services placed in other Departments should be on an 'out-posted' basis. The proportion of clerical positions was increased to give more administrative support to qualified legal staff. Professional Assistant positions were created to attract trainees who had passed the first year of a Bachelor of Laws degree – none of these was assigned to the Parliamentary Drafting Division. Former First and Second Division positions across the public service were 'broad banded' in 1964 and all officers deemed to have executive functions were classified into six levels within the Second Division. Further reclassification of legal staff proposed by the Attorney-General's Department in 1966 was agreed by the Board in November 1967, but increases in salary again fell short of those which had been sought.

Increasingly severe, the staffing difficulties in the Parliamentary Drafting Division were not unique to the Commonwealth. Responding to a letter on the issue from Victoria's Attorney-General in 1964, new Commonwealth Attorney-General Billy Snedden declared that the short supply of trained parliamentary drafting was 'an embarrassment' to the federal and state governments, and in other British Commonwealth countries. Agreeing that any proposal to improve the position was deserving of 'full and careful attention' he nonetheless rejected suggestions which had been made about setting up a school for drafters. Noting that the Parliamentary Draftsman would not have time to be its 'professor' he cited other physical limitations, with his department already overcrowded for office space. Neither did he favour a proposal to use student drafters from other countries to work on various laws, saying it would be better to train state drafters in the Commonwealth office. Echoing the sentiments of John Ewens, the Attorney-General cautioned:

> *the only practical way of teaching drafting is by doing drafting. True, by no means every lawyer has the required aptitude, so that there is the earlier task of selecting for teaching, as best one can, those who appear to have the aptitude.*[32]

[32] Attorney-General Billy Snedden to the Attorney-General of Victoria, 6 April 1964, in reply to a letter written to him on 6 March, just after his appointment as Attorney-General.

Significant trade practices and bankruptcy legislation was passed during Billy Snedden's term as Attorney-General, from 4 March 1964 to 14 December 1966. He later served as Minister for Immigration, Minister for Labour and National Service, and as Treasurer. Leader of the Opposition from 1972 to 1975, he was Speaker of the House from 1976 until 1983. Knighted in January 1978, Sir Billy died on 27 June 1987.

[Photograph courtesy of Auspic]

Seeking Solutions

Drafting issues were again scrutinised by the Joint Committee of Public Accounts during its 1968 examination of financial regulations. Noting strenuous efforts to improve the situation during the decade, the Committee found that circumstances in the Parliamentary Drafting Division were substantially unchanged from 1960. Recruitment difficulties and understaffing were still contributing to unacceptably long waiting periods, particularly for subordinate legislation. John Ewens reported to the Committee that 46 drafters had been recruited since 1950. During the same period 33 drafters had left, 17 after one year's service, and only seven having stayed five years or longer. Scathing about the drafting ability of some recent recruits, Ewens told the Committee he was 'being given boys to do men's work', saying that they lacked the right personality, type of mind, training or legal background.

Six additional drafting positions, and an extra six positions to provide clerical assistance, were provided from 30 May 1968. A Principal Legal Officer position was created to take on responsibility for publications, and former drafter Doug Croker was coaxed back from the Executive Division to fill this role.[33] Although the full complement of staff was adequate to maintain the ongoing work program it was not sufficient to deal with the backlog – even if all the positions could be filled by appropriately experienced people. Practical options for reducing subordinate legislation were limited and, unless the functions were strictly divided, Bills work would always get priority.

[33] Responsibility for the publications function was transferred to the Legislative Drafting Division on its creation in 1973.

Position No.	DESIGNATION	Class.	NOMINAL OCCUPANT	ACTUAL OCCUPANT
1.	Parliamentary Draftsman	$14,500	Ewens J.Q.	Ewens J.Q.
2.	First Assistant Parliamentary Draftsman	$11,500	Comens C.K.	Comens C.K.
3.	First Assistant Parliamentary Draftsman	$11,500	Quayle B.C.	Quayle B.C.
4.	Senior Assistant Parliamentary Draftsman	$10,500	Monro J.	Monro J.
5.	Senior Assistant Parliamentary Draftsman	$10,500	Kolts G.K.	Kolts G.K.
6.	Senior Assistant Parliamentary Draftsman	$10,500	Curtis L.J.	Curtis L.J.
41.	Senior Assistant Parliamentary Draftsman	$10,500	Sexton M.T.	Sexton M.T.
7.	Principal Legal Officer	$7990-8560	James M.W.A.	James M.W.A.
8.	Principal Legal Officer	$7990-8560	King R.J.	King R.J.
31.	Principal Legal Officer	$7990-8560	Tudor H.H.	Tudor H.H.
40.	Principal Legal Officer	$7990-8560	VACANT (Sect.50 Embargo)	Croker D.R.
9.	Senior Legal Officer	$6595-7165	VACANT	VACANT
10.	Senior Legal Officer	$6595-7165	Wainwright J.W.	Wainwright J.W.
11.	Senior Legal Officer	$6595-7165	Croker D.R.	VACANT (Nominal occupant in position no. 40
32.	Senior Legal Officer	$6595-7165	Wright E.J.	Wright E.J.
12.	Legal Officer	$3392-6180	Astolfi I.R.	Astolfi I.R.
13.	Legal Officer	$3392-6180	Vacant Cowles J.R.	Cowles J.R. declined
14.	Legal Officer	$3392-6180	White R.J.	White R.J.
15.	Legal Officer	$3392-6180	Adams J. McP.	Adams J. McP.
16.	Legal Officer	$3392-6180	McKenzie J.	McKenzie J.
17.	Legal Officer	$3392-6180	Miss Cunningham J.M.	Miss Cunningham J.M.
18.	Legal Officer	$3392-6180	Sarveas J.R.	Sarveas J.R.
19.	Legal Officer	$3392-6180	Miss Mesirfield C.R.	Miss Mesirfield C.R.
33.	Legal Officer	$3392-6180	Mrs McKenzie E.J. (Section 54B leave	Turnbull I. Mc.L. (Temporary Employee).

Parliamentary Drafting Division staff list, around the beginning of 1969.

Dismissing one option of having departments draft their own regulations, the Committee recommended that the Attorney-General's Department should continue as the sole drafting authority for 'subsidiary legislation'. In April 1969 Secretary Ted Hook recorded agreement with this finding, and reported on progress with implementing various other recommendations.[34] A university recruitment approach being developed for the whole Department would put special emphasis on attracting people to the 'challenging and imaginative' work of parliamentary drafting. Consideration was being given to possible formalised training for drafters, and to more flexible ways of allocating resources. While Hook accepted the Committee's suggestion that the Department should persist in its experiment of transferring officers from other Divisions to drafting, other documents from the era indicated that there was little prospect of getting volunteers to this end, and that conscripts were not what was needed.

Several of the JCPA's recommendations related to the responsibilities of instructing departments to ensure that proposed amendments were consistent with existing statutes, and to monitor projected changes and give timely notice to the drafters. Commenting on a noticeable decline in the standard of instructions given by departments to the Parliamentary Draftsman, the Committee recommended that strenuous efforts be made to improve the situation. In consultation with the Attorney-General's Department, the Public Service Board organised a five-day training course on the 'Preparation of Legislation'. A pilot course conducted in November 1969 for officers directly concerned with preparing drafting instructions was further developed and one other course, attended by 24 participants, was held the following year. The course dealt with the background to legislation; legislative machinery; policy formulation and its translation into legislation; and the roles of all those involved in the process. Practical projects relating to the preparation of legislation were included in the program.

An experiment involving the commissioning of external barristers to undertake various drafting projects had been conducted towards the end of 1964. Suggested by the Public Service Board on a number of occasions as a way of reducing delays, the tactic was also on the list of possible solutions recommended by the JCPA in 1968. Senior Assistant Parliamentary Draftsman Jim Monro reported on the exercise, using as measures of success reduction of delays and lack of impact on the workload of senior officers. Thirteen carefully chosen matters of 'lawyers' law' divided among six counsel from South Australia, Victoria and New South Wales still required detailed written notes from senior drafters, to compensate for the barristers' unfamiliarity with government processes. Advice given by drafters at any meetings requested by counsel was generally

[34] Secretary to the Attorney-General's Department, Ted Hook, memo to the Joint Committee of Public Accounts, 9 April 1969.

ignored, instructions were not critically examined and there was an understandable but nonetheless obvious lack of understanding of parliamentary procedure, general legislative policy and drafting forms. None of the work submitted was suitable for despatch to clients as settled drafts. While the experiment expedited the allocation of matters for drafting it aggravated delays in settling Bills. Often more time was spent on revision by senior officers than if the drafting had been done internally, without the added benefit of training a junior in drafting technique at the same time.[35]

Endorsing Monro's report as consistent with his own experience and investigation of overseas drafting practices, Ewens informed the Secretary:

> *I have yet to discover any draftsman in any country who has obtained any significant help from having legislation drafted by Counsel inexperienced in legislative drafting. The drafting of legislation is not, as one writer has put it, a matter for 'dabblers' or 'amateurs'. Further, the training and experience of Counsel do not tend to make them good draftsmen. They are concerned with making a particular case or argument or destroying that of someone else. Their experience does not train them for the 'building up' process that drafting requires. Another point is that Counsel tend not to follow the instructions if they disagree with the policy. A draftsman has to be, as one writer has put it, an 'intellectual eunuch'. But Counsel tend to want their own way.*[36]

Returning from a visit to drafting offices in Canada, the United States and the United Kingdom in November 1968, John Ewens was convinced that conditions of employment which would attract the right people to drafting were the only answer. Believing that such people existed and should be sought, he recognised that they were never likely to leave other jobs for demanding and comparatively lowly paid work in drafting, which he noted was generally viewed as 'a very peculiar branch of business'. His own conviction was that drafting was 'not an ordinary job that an ordinary lawyer can do', but required 'special and unusual talents'. Ewens declared that no formal teaching could 'make a man a draftsman' and that there was 'no substitute for the apprentice system' during 'many years of practical work'. Describing the position as serious, work as expanding and the need for quality greater than ever, he warned that if sufficient competent drafters could not be found to replace six senior officers due to retire within the next few years, then the situation would be desperate.

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[35] Minute from Jim Monro to John Ewens, 'Drafting of Legislation by Counsel', 6 December 1968.
[36] John Ewens to Secretary Attorney-General's Department, 6 December 1968.

Passionate about the importance of drafting, Ewens pleaded for high-level recognition of the problem:

> *If one acknowledges a duty to the community to have well drafted laws – to say nothing of the need for a Government to have them in order to carry out the policies it wishes to pursue – then there is clearly a responsibility to secure the right number of draftsmen of the right kind. To do less is to say that parliamentary drafting is not needed – in Sir Robert Menzies' words, have your drafting done by the office boy.*[37]

Principled and Pragmatic

Justice Michael Kirby in his review of *Statutory Interpretation – Principles and Pragmatism for a New Age* wrote of John Ewens and drafters:

> *Working under successive federal governments, Ewens taught how federal statutes, crablike, could edge themselves sideways into federal legislative power. I worked with Mr Ewens in the Australian Law Reform Commission and marvelled at his capacity to translate broad policy into succinct text. In thirty-three years I have never allowed myself the indulgence of denouncing parliamentary drafters. Their task [is] often performed under fearsome pressures of time and political drama.*
>
> [Judicial Commission of NSW, Education Monograph 4. Review July 2007]

A Radical Remedy

Reviewing the structure of the Attorney-General's Department following his appointment as Attorney-General on 12 November 1969, Tom Hughes decided that the parliamentary drafting function warranted urgent attention. On 5 January 1970 he put forward a Cabinet submission recommending remedies for 'dealing with a major crisis in the drafting of Commonwealth legislation'.[38] Warning of the possibility of 'substantial breakdown' the submission noted the extreme shortage of professional drafting staff, and the essential nature of the function in supporting an increasingly complex and demanding legislation program. Outlining the need for continuing high standards in drafting, it remarked on the consequent personal strain on drafters. It provided statistics on a mounting workload and unmanageable backlogs, especially in the area of subordinate legislation, delays in which had been subject to considerable criticism. Making unfavourable comparisons with drafting offices overseas, the submission

[37] John Ewens to Secretary Attorney-General's Department, 13 January 1969.
[38] Cabinet Submission No. 66, 5 January 1970.

stressed the difficulty in recruiting and training competent drafters in the Australian environment, which did not offer salaries, conditions or a career path commensurate with the onerous and highly skilled work involved. Advocating a 'bold and radical' approach, the submission recommended the creation of a separate statutory drafting office headed by a First Parliamentary Counsel who would be given the powers of a Permanent Head.[39]

Cabinet approved the introduction of legislation to establish an Office of Parliamentary Counsel and to create positions of First Parliamentary Counsel and two Second Parliamentary Counsel.[40] The new office was to be responsible for drafting of Bills, subordinate legislation and agreements having the force of law, and for issuing annual volumes of Commonwealth laws and reprints. Drafting for the Australian Capital Territory was to continue, and a branch of the office was to be established in Darwin. Cabinet did not agree that the convention of drafting for private members, subject to the pressure of government work, should be enshrined in the legislation. A recommendation that the new First Parliamentary Counsel should confer with the Public Service Board about organisation and salary levels for staff was supported, Cabinet specifying that this should be done 'having in mind the need to attract a sufficient number of suitable persons to the office'. Salaries for the three statutory appointees were 'to be left to the Higher Salaries Committee of Cabinet.'

Acting Secretary following Ted Hook's retirement on 2 February 1970, John Ewens directed the department's involvement in establishing a separate drafting office. In late January 1970, based on recent JCPA reports and the contents of the Cabinet submission, the Chairman of the Public Service Board, Sir Frederick Wheeler, sent Ewens a list of issues which he believed should be examined with a view to alleviating the crisis in drafting. Staffing, recruitment, training and the possibility of out-posting some drafting work to the Department's state offices were included. Refusing to consider the suggestions until the outcome of the Cabinet submission was known, Ewens subsequently nominated himself and Jim Monro to represent the department in a joint review of organisation, recruitment and staffing. He specified that this was to be informal and preliminary involvement, pending the appointment of the proposed First Parliamentary Counsel.

Set up in February 1970 the review team reported late in June, noting that it was drawing a number of conclusions rather than recommending specific solutions to problems in the Parliamentary Drafting Division. The team reported at length on

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[39] Prior to implementation of the *Public Service Reform Act 1984*, departmental Secretaries were designated 'Permanent Heads', with their powers prescribed under the *Public Service Act 1922.*
[40] Cabinet Decision No. 102, 27 January 1970.

difficulties in attracting and retaining staff, estimating workloads and the lack of available avenues for reducing work. It concluded that there would be benefit in a work measures study to inform establishment and recruitment plans. It recommended that greater emphasis should be placed on higher academic qualifications for drafters, that relevant tertiary courses should be encouraged, and that specific recruitment and training plans be developed to attract and retain capable drafters. Team members disagreed on some aspects of recruitment, the Board's representatives wanting to take more calculated risks with inexperienced lawyers and overseas recruits than the drafters deemed desirable.

Attorney-General Tom Hughes introduced the Parliamentary Counsel Bill soon after he came into office. He was Attorney-General from 12 November 1969 to 22 March 1971 before returning to practice at the New South Wales Bar.

[Photograph courtesy of the Attorney-General's Department]

Rapidly produced by Ewens, the Parliamentary Counsel Bill was introduced by Attorney-General Hughes on 12 March 1970. Pleased that his first Bill should deal with 'the essential work of the Parliament' Hughes stressed the urgency of the measure, expanding on arguments put forward in his submission to Cabinet. Universally supported in both chambers, the Bill engendered debate on wide-ranging issues associated with legislation. There was general agreement on the need to improve the status and autonomy of parliamentary drafting and of working conditions for drafters. The only amendment made in the House, itself amended by the Senate, related to means of fixing salaries and allowances of the three statutory officers of the new body. Several speakers expressed the hope that the Public Service Board would prove willing to fix salaries for junior positions 'in suitable relationship', one even suggesting that drafting staff may be better off employed outside the Public Service Act.

Recognising that the proposed legislation did not offer immediate solutions to the chronic problems associated with legislative drafting, parliamentarians saw it as the first step in reform. The need for accompanying practical measures to improve recruitment and training, and to produce consolidations of laws in a more timely manner were noted. Passed with creditable ease by both Houses, the *Parliamentary Counsel Act 1970* received assent on 15 May 1970.

Debate on the Parliamentary Counsel Bill – March 1970

Introduced on 12 March 1970, the Parliamentary Counsel Bill met with bipartisan support in both chambers. During the debate, which raised many issues about the preparation of legislation, many Members and Senators commented on the significance and value of the drafters' role

> *This is a Bill which directly or indirectly affects the work of each member of the Parliament. … [It is] a measure that is designed to make a substantial contribution to the efficiency of the Parliament as a legislative body.*
>
> [Attorney-General Tom Hughes p. 380.][41]

> *The cost of litigation today is such that it is a public duty on this Parliament to avoid creating disputes by inadequate drafting. … [W]e should never overlook the virtues of clear and accessible legislation. … [D]epartments and Ministers are dependent on guidance from the draftsman, and the work of the Parliament itself is greatly affected by the knowledge, experience and integrity the draftsman brings to this task. We depend so much on the voluntary and spontaneous wisdom of the draftsman in all these matters. It is essential that the Office have on its staff men of the ability and the standing necessary to perform this role. … [B]efore I end by again complimenting the Attorney-General on his first Bill and assuring him of our support for it, it is proper for me to say that this Bill at least is impeccably drafted.*
>
> [Leader of the Opposition Gough Whitlam pp. 1380-1382.]

> *These persons – I do not think the field should be restricted to the male sex – will exercise an office of very great responsibility, very great trust and very great importance in the functioning of the Parliament. I think it is reasonable that they be accorded a special office, a special status and a special salary.*
>
> [Senator Lionel Murphy p. 1049.][42]

> *This is a line of legal practice which seems to me to lead to a dead end. One joins the staff and there one stays. Unless the conditions of service are sufficient inducement for young legal officers to enter this branch of the Public Service, those who join could very well go up a blind alley and be lost there, very much of the good which this Office could do for the community would be lost. … One of the things that somebody has to do [is to convince the Public Service Board] that this is a special branch of the service, that it is very difficult to induce people into it and that conditions have to be made favourable, firstly to attract people, and secondly to hold them.*
>
> [Senator Donald Devitt pp. 1228-1229.]

[41] All Members' comments from Australia, House of Representatives 1970, *Debates* vol. H. of R. 66, pp 379-383; and vol. H. of R. 67 pp. 1380-1393.
[42] Senators' comments from Australia, Senate 1970, *Debates* vol. S.43, pp. 1007-1011, pp. 1048-1059 and pp. 1221-1243.

The difficulty of obtaining suitable draftsmen is aggravated by the fact that their work is not generally regarded in the legal profession as an attractive field in which to practise. It is particularly onerous and exacting work; it entails a large measure of responsibility; it has none of the glamour of heavy practice at the Bar; it is 'back-room' work. Few lawyers have a natural preference for drafting and it will not ordinarily attract a sufficient number of suitable practitioners from other fields of legal work unless a career in parliamentary drafting is given a status such as will counterbalance what is thought to be its lack of appeal. ... this lack of appeal is apparent rather than real. The work of a parliamentary draftsman offers a real challenge to a lawyer. He is involved in the essential processes of government; he has to perform the exacting task of translating what are at times the broadly and even loosely expressed ideas of practising politicians into legislation that will stand the scrutiny of the courts. In a nation blessed – as I believe we are – with a federal constitution this is seldom an easy task, for in this life, few blessings are unmixed.

[Attorney-General Tom Hughes pp. 380-381.]

The Parliamentary Draftsman is ... one of the most important men in the country. Unfortunately outside this House, very few people realise his importance. In many cases he is virtually the sole architect of legislation. ... The Parliamentary Draftsman is in substance in a position to alter the law. It is therefore vital that he be a person of great skill and integrity. ... Undoubtedly the skill of a Parliamentary Draftsman is a special one. ... [M]any people other than lawyers, as has been my experience, think that they are pretty good draftsmen. In fact few people have the necessary ability or skill to draft legislation. All this means is that the job must be attractive in both status and remuneration.

[Member for Adelaide Chris Hurford pp. 1385-1386.]

I should also like to congratulate the acting head of the Attorney-General's Department, Mr John Ewens. I know that for some time Mr Ewens has worked very hard on the concept and thoughts embodied in the Bill and on its development. I congratulate him upon the long hours of work and thought that he has given to this new move. The establishment of the Office of Parliamentary Counsel will give the drafting section a status and will bring this important section of government services closer to the Parliament. ... To make the Office of Parliamentary Counsel as successful as we all want it to be it will be necessary for the Public Service Board to co-operate to the fullest in obtaining officers of the necessary quality who will be working under the First Parliamentary Counsel and to see that satisfactory remuneration is given for their important skills.

[Member for Ballarat Dudley Erwin pp. 1386-1387.]

I would suggest that one of the things which has to be done is to popularise the role, significance and functioning of the drafting office. ... [Y]ou really are at the hub of affairs when you are in the drafting office.

[Senator Ivor Greenwood p. 1225.]

[How] many honourable members have ever sat down and from nothing have built up a very complex piece of legislation. … [A]t some stage, somewhere, some person starting from nothing, had to begin to construct what was to become quite a voluminous document. When honourable members think about that, they are thinking about the work of draftsmen. I want people, who, I think, do not fully understand the problems of the draftsman to try to comprehend this situation. A Minister says to a draftsman: 'I want you to draft a new Bill dealing with matrimonial causes. We have never had such a Bill before. There are at the moment at least 6 Acts in the 6 States dealing with this subject. I want you to marry into the Commonwealth Bill various sections of all the State Acts. I do not want you to offend this political group on which our Government depends. I do not want you to offend this other group. I want you to be very careful in this field and to watch that you do not do something that will cause offence somewhere else.' The draftsman is expected to be simultaneously a lawyer, a politician and a reliable gauge of public sensitivity.

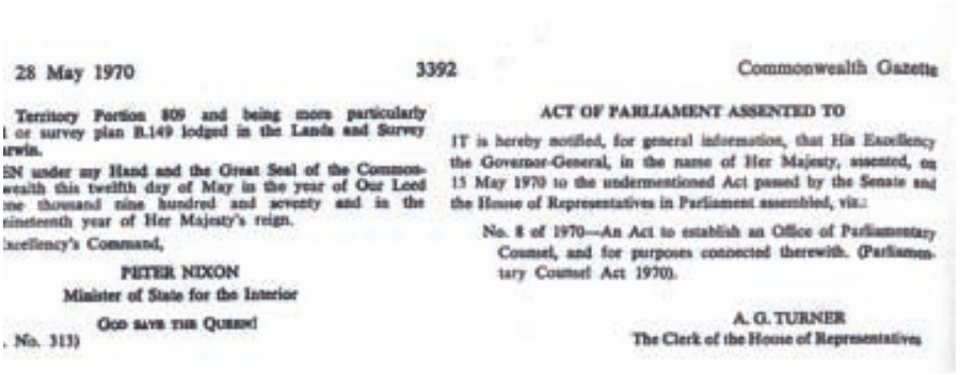
[Member for Hindmarsh Clyde Cameron p. 1389.]

I learnt from my experience with this extremely capable draftsman [Geoff Kolts] just what a draftsman must know and what he must be able to do. Unless a member of this Parliament … has had the advantage of sitting with a parliamentary draftsman and being able to see a man who, on the other side of the table, can tell a member in a flash what it is that he wants to know and who seems to know all that is to be known about every subject at hand and also knows what the High Court has said about that subject in years gone by, that member does not appreciate just what remarkable and extremely experienced men these drafters are. … We are lucky enough to get this sort of man into the services of the Parliament as a parliamentary draftsman. How on earth we get people like that on the kinds of salaries we offer is completely beyond me. … How we expect to hold them on those salaries I just cannot say. I do not know how we get them.

[Member for Hindmarsh Clyde Cameron p. 1390.]

[I] tender [to the parliamentary draftsmen] my sympathy for the circumscribed area in which the Commonwealth Constitution allows them to operate. … As a matter of fact the difficulties are so great that in many respects a parliamentary draftsman, functioning under our present constitution, is required to be a cartoonist rather than a portrait painter. In fact he can only sketch out certain limitations and hope to God that the High Court of Australia will deal with the best that he has been able to do within the limits that are imposed upon him by prior decisions of the High Court on one hand and the whims, caprice or political motivations of the Government on the other.

[Member for Cunningham Rex Connor p. 1391.]



28 May 1970 3392 Commonwealth Gazette

Territory Portion 809 and being more particularly
l or survey plan R.149 lodged in the Lands and Survey
rwin.

SN under my Hand and the Great Seal of the Common-
wealth this twelfth day of May in the year of Our Lord
ne thousand nine hundred and seventy and in the
nineteenth year of Her Majesty's reign.

xcellency's Command,

PETER NIXON
Minister of State for the Interior

GOD SAVE THE QUEEN!

. No. 313)

ACT OF PARLIAMENT ASSENTED TO

IT is hereby notified, for general information, that His Excellency the Governor-General, in the name of Her Majesty, assented, on 15 May 1970 to the undermentioned Act passed by the Senate and the House of Representatives in Parliament assembled, viz.:

No. 8 of 1970—An Act to establish an Office of Parliamentary Counsel, and for purposes connected therewith. (Parliamentary Counsel Act 1970).

A. G. TURNER
The Clerk of the House of Representatives

Assent to the *Parliamentary Counsel Act 1970* was notified in Commonwealth Gazette No. 43 of 28 May 1970.

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.

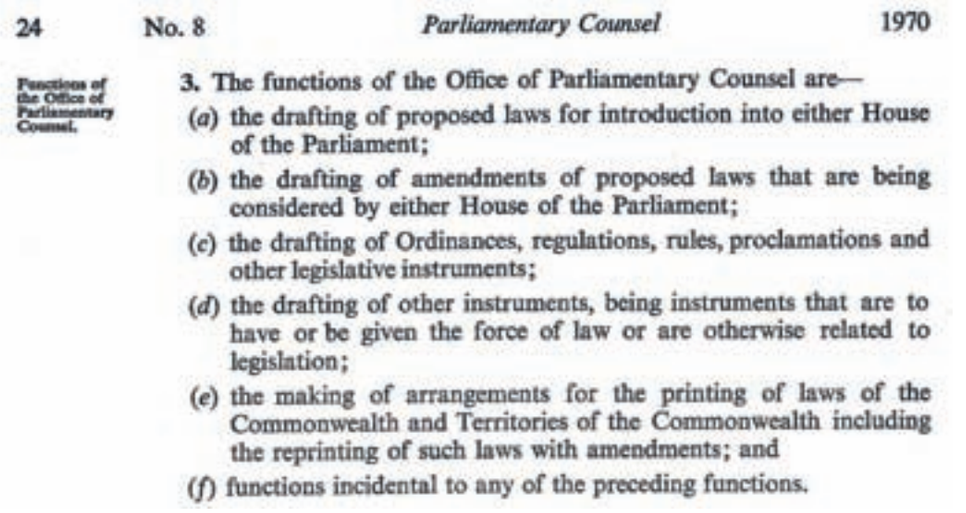
(4.) The First Parliamentary Counsel shall, under the Attorney-General, control the Office of Parliamentary Counsel.

The opening sections of the *Parliamentary Counsel Act 1970*, which established OPC as a statutory agency, separate from the Attorney-General's Department.

Parliamentary Counsel

Parliamentary Counsel

When the *Parliamentary Counsel Act 1970* commenced on 12 June 1970 a new statutory organisation, the Office of Parliamentary Counsel (OPC), came into being. Creation of the small semi-autonomous office was in some senses a gamble for the Government although, as had been noted during passage of the Act, there were successful precedents overseas in Britain, the United States of America and New Zealand. Appointments to the top three, statutory, positions in OPC were delayed until the end of June. While the local press recounted some speculation about the appointment of heads of the Attorney-General's Department and its 'newest child', OPC, for the drafters at least there were no surprises. John Ewens was appointed First Parliamentary Counsel (FPC) from 29 June 1970, and the two next most senior drafters Charles Comans and Bronte Quayle were made Second Parliamentary Counsel. At the same time Clarrie Harders was appointed Secretary to the Attorney-General's Department. First Parliamentary Counsel had the powers of a Permanent Head, although Cabinet had added the proviso that this was confined to recruitment and staffing – OPC was to continue to use the management services of the Attorney-General's Department. The Office stayed in the Administrative Building in close proximity to the departmental library. It kept the same telephone numbers and used the address 'c/- Attorney-General's Department'.



24 No. 8 *Parliamentary Counsel* 1970

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.

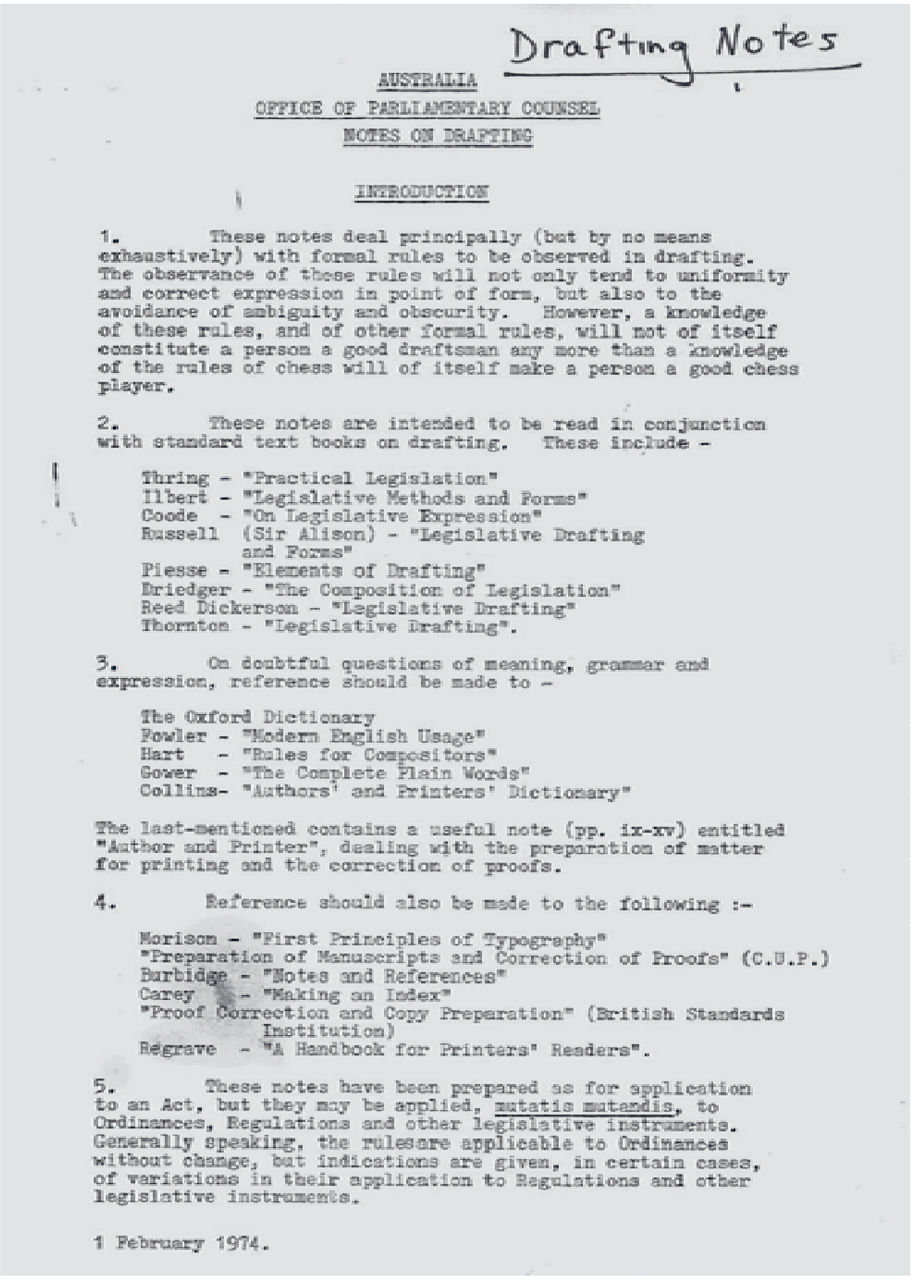
Section 3 of the *Parliamentary Counsel Act 1970* set out the functions of OPC.

Drafting in OPC

Drafters other than the three statutory officers, and the clerical and administrative staff of OPC, continued to be employed under the *Public Service Act 1922*. Twenty-four drafting positions were located in Canberra, with no formal division of work on Bills and subordinate legislation. OPC's staffing establishment included three drafting positions in Darwin – formerly the Drafting Section of the Northern Territory Crown Law Office which had been transferred to the Attorney-General's Department from the Department of the Interior in 1951. Under the supervision of the Crown Law Officer, the Section drafted Bills for the Northern Territory Legislative Council.

When drafting resources were reviewed early in 1970, prior to the creation of OPC, the staffing situation was a cause for concern. One of four Principal Legal Officer positions and six of the nine Legal Officer positions in Canberra were vacant. Staffing in the Northern Territory was declared 'unsatisfactory' with no officer available to fill the section head position (recently vacated by David Hunt who had been acting in it) and just one newly promoted Senior Legal Officer, Bernie Sutherland, substantively engaged in drafting. The review team noted the major difficulties in recruiting and training staff to lower level drafting positions in the past five years. Only one applicant in the two most recent recruitment campaigns had been considered suitable as a drafter, and he did not pass the requisite medical examination. Recognising the severity of the problem, parliamentarians debating the Parliamentary Counsel Bill had made clear their expectations that the attractiveness of drafting as a career would be enhanced through targeted recruitment and better remuneration.

By October 1970 only one additional junior drafter had been appointed. In June 1971 Ewens informed the Attorney-General of ongoing difficulties in getting the Public Service Board to agree to higher salaries for Third Division officers in OPC, or to reclassification of Second Division positions to improve relativity with the salaries of the statutory officers. Concerned that he would lose more senior drafters to higher ranks in the public service or to outside employment, and would not be able to attract any experienced lawyers to drafting, Ewens declared that the Board had 'flatly refused' to grant the salary increases expected by Cabinet when it approved the introduction of the Parliamentary Counsel Bill. A recruitment campaign conducted in 1972 again proved disappointing. In October that year some media articles carried headlines such as 'No Staff to Draft Bills' and 'Promises Clog Pipelines'. The *Financial Review* reported that OPC was operating with only two-thirds of its staff and identified the 'trouble centre', saying that the government should not allow the Public Service Board to lead it around by the nose. Only 20 of the 30 legal positions in OPC were filled at that time.



Drafting Notes

AUSTRALIA

OFFICE OF PARLIAMENTARY COUNSEL

NOTES ON DRAFTING

INTRODUCTION

1. These notes deal principally (but by no means exhaustively) with formal rules to be observed in drafting. The observance of these rules will not only tend to uniformity and correct expression in point of form, but also to the avoidance of ambiguity and obscurity. However, a knowledge of these rules, and of other formal rules, will not of itself constitute a person a good draftsman any more than a knowledge of the rules of chess will of itself make a person a good chess player.

2. These notes are intended to be read in conjunction with standard text books on drafting. These include -

Thring - "Practical Legislation"
Ilbert - "Legislative Methods and Forms"
Coode - "On Legislative Expression"
Russell (Sir Alison) - "Legislative Drafting and Forms"
Piesse - "Elements of Drafting"
Driedger - "The Composition of Legislation"
Reed Dickerson - "Legislative Drafting"
Thornton - "Legislative Drafting".

3. On doubtful questions of meaning, grammar and expression, reference should be made to -

The Oxford Dictionary
Fowler - "Modern English Usage"
Hart - "Rules for Compositors"
Gower - "The Complete Plain Words"
Collins- "Authors' and Printers' Dictionary"

The last-mentioned contains a useful note (pp. ix-xv) entitled "Author and Printer", dealing with the preparation of matter for printing and the correction of proofs.

4. Reference should also be made to the following :-

Morison - "First Principles of Typography"
"Preparation of Manuscripts and Correction of Proofs" (C.U.P.)
Burbidge - "Notes and References"
Carey - "Making an Index"
"Proof Correction and Copy Preparation" (British Standards Institution)
Regrave - "A Handbook for Printers' Readers".

5. These notes have been prepared as for application to an Act, but they may be applied, mutatis mutandis, to Ordinances, Regulations and other legislative instruments. Generally speaking, the rules are applicable to Ordinances without change, but indications are given, in certain cases, of variations in their application to Regulations and other legislative instruments.

1 February 1974.

Some well-worn notes on requirements for 'a person' learning how to be a 'draftsman'. Except for the addition of paragraph 4, the same introduction was used for Notes on Drafting given to trainees in the Parliamentary Drafting Division in the early 1950s.

Believing that experienced drafters must be more readily available overseas Attorney-General Murphy searched for them there, during his own overseas visits and by having travelling lawyers and academics hunt for talent. Bronte Quayle was despatched on missions which included recruitment, and did manage to recruit experienced drafter Bill Galbraith from the United Kingdom in 1974. After the scrutiny the parliamentary drafting function had been subjected to, OPC was comparatively well positioned when early in 1972 the government commenced a review of the Attorney-General's Department as a part of a general assessment of the scope for reducing and eliminating functions across the public service.

Enhancing training for drafters was another challenge facing OPC. At that time there were very few universities dealing with the subject specifically. One course which included teaching of the basic principles of drafting was given by former drafter Dennis Pearce, by then a senior lecturer in law at the Australian National University. The team undertaking the 1970 joint review considered strategies for improving drafter recruitment and training. Suggestions included 'special and distinct' advertising for parliamentary drafting positions, and more intensive long-term promotion of drafting work within universities and to younger members of the legal profession. A cadetship scheme to recruit 'outstanding' graduates or final-year undergraduates and provide them with articles and some practical legal experience before they commenced drafting work was also mooted. Citing the disadvantages of recruiting senior people with no previous experience in legislative drafting, the departmental representatives on the review team, John Ewens and Jim Monro, believed that recruitment should be confined to base-grade entry. They were also wary of recruiting overseas drafters, unfamiliar with Australian laws and needing to be accommodated in Canberra's scarce housing situation.

Once employed, a drafter's training was 'on-the-job', following a standardised process developed in the Parliamentary Drafting Division. To occupy them for their first week in the Department, trainees at Legal Officer entry level were given to read 'Notes for New Officers' (prepared by a Senior Assistant Parliamentary Draftsman) and 'Notes on Drafting' (prepared by the Parliamentary Draftsman) along with extracts from textbooks and articles on legislative drafting. They were invited to read additional textbooks on drafting, available in the departmental library. Instructed in the use of the library, the opinions index and the distribution of departmental publications trainees were shown a copy of the daily letter book to familiarise them with the proper style of correspondence. Descriptions of the organisation and functions of the Parliamentary Drafting Division and others in the Department were provided to be read and absorbed. Starting with simple regulations, trainees were then given drafting jobs which would be discussed in depth with one of the Second Division officers. Senior officers continued to closely supervise trainees' work, providing feedback on general principles as well as drafting technique. Trainees were given opportunities to sit in on conferences with

clients, and for Bills work to attend Parliament in the company of senior officers. Depending on the 'individual ability and capacity of the officer', this pattern was followed for some years, albeit with increasingly complex drafting work allocated.

Upgrading the Statute Book

Revamping of the Commonwealth parliamentary drafting service was implemented in a climate of increasing attention to the function in Australian states and overseas. The heads of both the New South Wales and Victorian drafting offices, which had been established in the late 1870s, were redesignated Parliamentary Counsel in 1970. That year the Western Australian Parliamentary Draftsman's Office was split from the Solicitor-General's Office to become a separate branch of the Crown Law Department. The New Zealand Law Drafting Office became the Parliamentary Counsel's Office in 1973. Long-running criticism about the way statutes were drafted led to the formation of the Statute Law Society in Britain in 1968.

Particularly concerned with legislation which was incomprehensible to the consumer, the Statute Law Society instigated various analyses of the needs of statute users which produced some recommendations for improvement in the early 1970s. In May 1973 a committee chaired by parliamentarian Sir David (later Lord) Renton was set up to review drafting procedures with a view to achieving clearer and simpler legislation. While many of the findings of the 1975 Renton Report and other committees of inquiry were not applicable to Australian conditions, the conclusions and the discussion they generated did inform subsequent review of OPC's drafting practices. Some recommended improvements were already in use in Australia, where the parliamentary drafting function had always answered to a Minister 'capable of concern with legislative technique' and where there was an active Legislation Committee. Amendment of Australian Acts was traditionally effected by textual alteration of those Acts rather than by provisions modifying them or overriding them in some other way. This method enabled reprints to be made of Acts as amended so that law on a subject could be ascertained from one consolidated text.

Consolidation of statutes was an issue of concern for both British and Australian parliamentarians. At the time the *Parliamentary Counsel Act 1970* was passed, the most recent official consolidation of Commonwealth laws was that prepared by retired Parliamentary Draftsman Martin Boniwell in 1950. To assist in locating the law, annual volumes of Acts included tables showing lists of Acts in alphabetical order and particulars of amendments made. Where feasible, Acts were repealed and re-enacted as needed, and consolidations of individual amended Acts were published at irregular intervals. By late 1970 OPC was concentrating its resources on publishing pamphlet reprints of Acts and regulations, but these were not in bound volumes. There was some

wider debate about the value of complete consolidations, which were resource intensive and quickly out of date. Both the United Kingdom and Victoria were introducing loose-leaf consolidations, reprinting every Act but not all at once. While the Commonwealth subsequently adopted this system for some years, replacing changed pages, especially of the larger Acts, proved to be a constant and tedious task.

After its separation from OPC in 1973, the Legislative Drafting Division of the Attorney-General's Department was given responsibility for publishing reprints and consolidations. Three initial volumes of a 12-volume reprint of Commonwealth Acts, as altered to 31 December 1973, were published in 1974. In the foreword, Attorney-General Lionel Murphy opined that 'consolidations should occur at intervals of about five years'. He noted that the 'latest computer techniques developed in the Australian Government Printing Office' had been used to produce the publication. Although the reprint was prepared electronically, annual volumes of Acts passed continued to be typeset by traditional lead-type methods until 1980. The consolidated reprint contained marginal notes, which were discontinued when Bills began to be typeset electronically. Producing electronic versions remained laborious and expensive. Because of the sheer size of the volumes, publishing was often delayed for several years. Hot-type printing of electronically prepared copy ended when the Australian Government Publishing Service was sold in late 1997 and the then Office of Legislative Drafting (OLD) began producing consolidations in Microsoft Word. Early in the twenty-first century OLD reverted to binding pamphlet versions of reprinted Acts, and abandoned continuous numbering of pages in the volumes and tables of contents. Production of printed volumes of statutory rules was discontinued with the advent of the Federal Register of Legislative Instruments (FRLI) from 1 January 2005. Responsible for both SCALE and CONSOL from 1998, OLD's publishing role was recognised with a further name change in 2005, to the 'Office of Legislative Drafting and Publishing' (OLDP).

Working in the Attorney-General's Department in the 1970s, former drafter Marie (Kinsella) Sexton produced one of its major publications. The first such volume since annotations of statutes in 1936 and 1950, *The Australian Constitution Annotated* contained case annotations, notes and tables relating to the Commonwealth of Australia Constitution Act, as altered to 31 December 1975. An updated reprint was published in 1980, the year that Marie Sexton retired. Pointing to substantial improvements in format, by comparison with previous publications, Attorney-General Peter Durack praised the great amount of skill and labour which had gone into the work.[1]

[1] *The Australian Constitution Annotated,* AGPS Canberra, 1980, Attorney-General's Foreword.

Early Exposure

Secretary to the Attorney-General's Department from June 1970 to July 1979, Sir Clarrie Harders described in an oral history interview how he had worked in most legal areas of the Department – 'other than legislative drafting'.[1] His only son, Geoff Harders, joined OPC in 1977. He was Second Parliamentary Counsel from January 1982 until March 1987, and later worked as a consultant drafter in the Office. Geoff Harders had known John Ewens since childhood, as Sir Clarrie explained:

> *When I came to Canberra first and my wife soon joined me here in 1950, we had no hostel to go into, there was no government housing available – there was certainly no private housing available – into which we could go. John at that time had the opportunity to provide accommodation for us and my wife and I and my number-one child who was then about 6 inches long or 6 months old, and is now about 6 feet 6 tall, was our only child and John was tremendously kind to him. He wasn't so kind to me when he used to throw him up to the ceiling and catch him on the way down, but my family has never forgotten its association with the Ewens family ...*[2]

[1 National Library of Australia Oral History of Clarence Waldemar Harders. Interviewed by Robert Hyslop, 13 September 1990]

[2 Sir Clarrie Harders. Farewell speech to John Ewens November 1972]

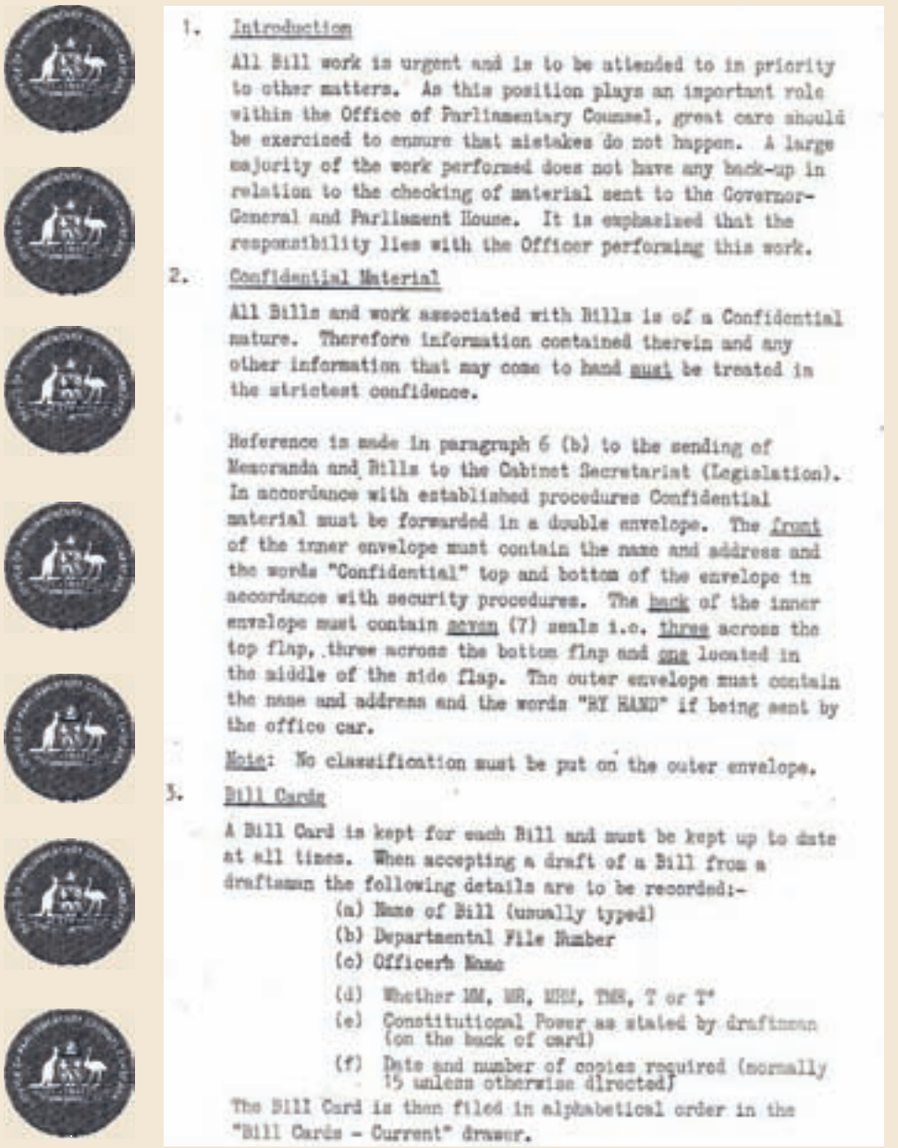
Cooperative Work

One suggestion from the pilot 'Preparation of Legislation' course conducted by the Public Service Board in November 1969 was that a legislation handbook should be developed and distributed, as a guide for departmental instructors. Initially prepared by the Public Service Board, the first edition of the handbook took several years to produce. The concept was raised by the Board with John Ewens in April 1970. In November 1971 retired Commonwealth Crown Solicitor Harold Renfree was engaged to produce a first draft of the book. Senior drafter Jim Monro provided detailed comments on various versions of the draft from 1973 to 1975. On 6 April 1976 the Public Service Board advised that the manuscript was at a stage where the Attorney-General's Department needed to confirm its requirements for copies. After some discussion about whether the handbook should be presented in loose-leaf form, the first 222 copies were sent to the Department on 1 June 1976 for internal distribution. Unbound and stapled, they were provided with the advice that this was because there were amendments pending. The Department of Prime Minister and Cabinet took over publication of the *Legislation Handbook* from the second edition in 1980, producing four further editions by 1999.

Cooperative work on uniform and complementary legislation directed by the Standing Committee of Attorneys-General (SCAG) after 1959 facilitated increased communication between the heads of federal and state drafting offices. In accordance with a directive given by Attorneys-General at a meeting in December 1969 a conference of drafters was held from 20 to 25 February 1970. This preceded and reported to a Conference of Law Ministers of Australia and New Zealand, held in Wellington, New Zealand, on 26 and 27 February. Attended by representatives of the Commonwealth, most Australian States and New Zealand, the 'Draftsmen's Conference' established the Parliamentary Counsel's Committee (PCC). Membership of the PCC ultimately included the heads of: the Offices of Parliamentary Counsel (or equivalent) for the Commonwealth and the States; the Australian Capital Territory and Northern Territory drafting offices; the New Zealand Parliamentary Counsel Office and the Commonwealth Office of Legislative Drafting. Drafters met again in July 1970, when discussion focused on systems for programming legislation.

At a Sydney meeting in March 1972 Ministers agreed that when uniform legislation was to be prepared the matter should be referred to the PCC and the source of further drafting instructions should be identified. In subsequent decades the PCC prepared draft legislation in diverse areas including interchange of Commonwealth and State powers, cross-vesting of court jurisdiction, family law, reciprocal enforcement of probation and parole orders, transfer of prisoners, consumer credit, commercial arbitration, forensic procedures, crimes at sea, cross-border workers' compensation and food law. An invaluable forum for uniform and complementary laws, promoting consistent styles of legislation and exchanging ideas, the PCC continued to work on projects referred to it by SCAG. As Ministerial responsibility for drafting in a number of jurisdictions shifted to portfolios other than the Attorney-General's, extra work was introduced. Parliamentary Counsel who were assigned projects which necessitated or would benefit from collective consideration brought this work to the PCC, sometimes by means of a formal referral through SCAG. With some of the PCC's drafting projects involving most or all jurisdictions, the Committee became adept at juggling project and meeting schedules compatible with numerous parliamentary programs. Meeting three or four times a year, the PCC also established and supported drafters' conferences and the Information Technology Forum as a resource for drafting offices.

'Step by Step in the Bills Office'



1. Introduction

All Bill work is urgent and is to be attended to in priority to other matters. As this position plays an important role within the Office of Parliamentary Counsel, great care should be exercised to ensure that mistakes do not happen. A large majority of the work performed does not have any back-up in relation to the checking of material sent to the Governor-General and Parliament House. It is emphasised that the responsibility lies with the Officer performing this work.

2. Confidential Material

All Bills and work associated with Bills is of a Confidential nature. Therefore information contained therein and any other information that may come to hand must be treated in the strictest confidence.

Reference is made in paragraph 6 (b) to the sending of Memoranda and Bills to the Cabinet Secretariat (Legislation). In accordance with established procedures Confidential material must be forwarded in a double envelope. The front of the inner envelope must contain the name and address and the words "Confidential" top and bottom of the envelope in accordance with security procedures. The back of the inner envelope must contain seven (7) seals i.e. three across the top flap, three across the bottom flap and one located in the middle of the side flap. The outer envelope must contain the name and address and the words "BY HAND" if being sent by the office car.

Note: No classification must be put on the outer envelope.

3. Bill Cards

A Bill Card is kept for each Bill and must be kept up to date at all times. When accepting a draft of a Bill from a draftsman the following details are to be recorded:-

(a) Name of Bill (usually typed)
(b) Departmental File Number
(c) Officerh Name
(d) Whether MM, MR, MRM, TMR, T or T*
(e) Constitutional Power as stated by draftsman (on the back of card)
(f) Date and number of copies required (normally 15 unless otherwise directed)

The Bill Card is then filed in alphabetical order in the "Bill Cards - Current" drawer.

Introductory paragraphs of a 'Statement of Duties and Functions' prepared by Bills Officer Ron Higman. This document was first issued on 1 July 1974. It emphasised the paramount importance of producing Bills, and outlined security procedures for transferring drafts between OPC and instructing departments. Manual transfer of drafts continued to follow these procedures, but was much more time consuming than the secure Fedlink electronic system which was available in OPC from 2002.

Changing the Guard

John Ewens retired at a momentous time in Australian government. Following seven separate elections in nine years and three changes of Prime Minister in the late 1960s, on 2 December 1972 Gough Whitlam led a Labor government into power for the first time in 23 years. Ewens, who as Parliamentary Draftsman had served eight Attorneys-General in nine changes of the office, retired on 17 November 1972, two weeks before the election. Charles Comans succeeded Ewens and Geoff Kolts was appointed Second Parliamentary Counsel, from 18 November 1972. The pending change of First Parliamentary Counsel was the subject of comment in Parliament. As well as paying tribute to Ewens for his long, dedicated and distinguished service, and acknowledging approval of his replacement, Opposition Senator Lionel Murphy noted that 'it would not be consonant with the proper operation of the democratic process' if such vacancies were to be filled during the period preceding the election of a new government.[2] Anticipating this situation, Charles Comans had asked the incumbent Attorney-General, Senator Greenwood, to seek Whitlam's agreement to his appointment as First Parliamentary Counsel before an announcement was made.

When Labor came into office the new Attorney-General, Murphy, subjected Comans to a 'startling introduction'.[3] Announcing that he was dealing with all new Ministers who, after a long time in Opposition, would be wanting numerous legislative ideas to be drafted, the Attorney-General demanded to know if Comans could handle this, saying that otherwise the government would find someone who could. In the next three years the Office of Parliamentary Counsel, led by Comans, put enormous drafting effort into legislation giving effect to new social and economic policies, and reforms to health, education, foreign affairs, social security and industrial relations.

Prime Minister Gough Whitlam, already personally known to senior drafters as the son of Harry ('Fred') Whitlam, a former Crown Solicitor and respected colleague, took a close interest in the legislation program. Determined that any laws passed by his government should anticipate challenges in the High Court, the Prime Minister consulted with the Attorney-General, Solicitor-General, Secretary to the Department and First Parliamentary Counsel before introducing any legislation or taking any action which any of them thought might come before the courts.[4] In March 1973 the Legislation Committee of Cabinet issued a formal directive that Parliamentary Counsel

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[2] Australia, Senate 1972, *Debates*, vol. S. 54, pp. 1981-1983.
[3] National Library of Australia, Oral History and Folklore Collection, Charles Comans, recorded at Canberra on 16-17 October 2007 by John Farquharson.
[4] Gough Whitlam's contribution to the *Oxford Companion to the High Court of Australia,* p. 708. Copied in October 2004 by Whitlam and sent to Charles Comans for his 'approaching 90th birthday'.

was to prepare a memorandum on each draft Bill. This was to provide details of the Cabinet authority for the Bill, including any aspects of the Bill not covered by that authority, and to draw attention from a legal perspective to any provisions in the draft which may not prove acceptable to Parliament.[5]

As Prime Minister from 5 December 1972 to 11 November 1975, Gough Whitlam kept a close eye on all Bills. He was also Australia's shortest-serving Attorney-General, holding that appointment and several others for the first two weeks after his government was elected.

[Photograph courtesy of the Attorney-General's Department]

A purist in the correct use of English and grammar, John Ewens had avoided provisos and legal jargon wherever practicable. He instigated a general practice of using present tense in drafts, and abandoned expressions like 'aforesaid', 'hereunder', 'hereinafter', 'hereinbefore', 'thereafter', 'therein' and the use of 'such' as a demonstrative adjective. While this stern approach to unnecessary words was an advance in some aspects, Commonwealth drafting style was increasingly regarded as antiquated. Many traditional forms of expression remained, and the priority given to precision resulted in much convoluted language. Under the new Attorney-General and the new First Parliamentary Counsel from 1972, drafting style was closely re-examined to identify possibilities for further improvement. In November 1973 Attorney-General Murphy asked Charles Comans to supply a list of all changes in parliamentary style or language and drafting style since Federation. Comans also wrote a paper on 'shortening of Acts' and prepared briefing for the Attorney-General about drafting practices introduced to shorten and simplify Bills.

To facilitate reading and comprehension, figures rather than words were adopted for dates, amounts of money and section numbers of Bills; marginal notes were printed in bigger type;[6] the definite article 'the' was removed from definitions; stops were omitted from part and division numbering; and 'correct' punctuation was incorporated to better indicate meaning. Repetition in Bills was avoided by including more definitions in the Acts Interpretation Act. A compressed form of cross-references replaced the traditional

[5] Cabinet Decision No. 265, 6 March 1973.
[6] The use of margin headings (headings as sidenotes) was discontinued from 1980.

one, and phrases like 'of this Act' and 'of this section' were dropped from internal references. Sections of Acts relating to statutory corporations were rearranged to give greater prominence to the functions of the corporation. Two major changes were among those made at the urging of Senior Assistant Parliamentary Counsel, Ian Turnbull. From 1973 tables of provisions were included at the beginning of lengthy Bills (over 25 clauses long or divided into Parts) to both index and show the structure of the Bill. Secondly, confusion in cross-referencing was greatly reduced from 1976 when the Commonwealth dropped the system of double year citations, which had required renaming an Act with a new citation every time it was amended.

Members of the Style Manual Committee at the launching of the Second Edition – Canberra 1972. Grahame Johnston (first on the right) was drafter Tom Reid's father. As Associate Professor at the Australian National University School of General Studies, Johnston was joint author and editor of the first two editions of the enduringly valuable Australian government *Style Manual*, published in 1966 and 1972. First Parliamentary Counsel John Ewens (second from right) was a major contributor to the Committee. His word on style was law in his own office. Third from left, Dudley Erwin MP, during debate on the Parliamentary Counsel Bill in 1970 congratulated Ewens on his contribution to the establishment of OPC.

Quick to put its own stamp on the statute book, the Labor government introduced a new, shorter, enacting clause. The form 'Be it enacted by the Queen, the Senate and the

House of Representatives of Australia, as follows:' appeared in Prime Minister Whitlam's first Bill. One major change impacting on drafting was removal of the word 'Commonwealth', not just from the enacting words but more generally from new and amended legislation. Use of the word 'Australia' instead of 'the Commonwealth' in a political sense was effected by amendment to the Acts Interpretation Act, as was the use of the term 'Territory' without the additional words 'of the Commonwealth'. At the Legislation Committee meeting on 2 July 1973 the Prime Minister asked that the word 'Commonwealth' also be deleted from the names of certain government institutions, including the Industrial Court and the Conciliation and Arbitration Commission. By amendment to the Public Service Act the 'Public Service of the Commonwealth' became the 'Australian Public Service'. The required amendments to legislation, involving transitional provisions and changed references to other legislation were not simple. The changes and their repercussions also affected the order in which Bills could be drafted and introduced. Many elements of this approach survived only for the life of the government, and much was reversed after 1976.

OFFICE OF PARLIAMENTARY COUNSEL
DRAFTING INSTRUCTIONS
No. 5A of 1976

RECENT GUIDELINES

On 30 February 1976, Cabinet agreed -

(a) to oscillate weekly, for internal purposes, between the use of the title "Commonwealth of Australia" (or derived expressions such as "Commonwealth of Australia" or "Federal Government") and the title "Australia"; and/or

(b) in respect of legislation - that as the new system of citation left the Short Title rather too short and thus caused employment problems at the Government Printing Office, the date referred to in the Short Title should henceforward be expressed in Roman Numerals :-
e.g. SUPERANNUATION ACT MCMLXXVI (as amended)

O. K. Jiggs

Least Parliamentary Counsel
1 April 1976(before 12 noon)

N.B. This drafting instruction is to be read in addition to and not in derogation of, inter alia, anything.

Extract from an imitation Drafting Instruction circulated within OPC on the morning of 1 April 1976. When the prank was received with an apparent lack of managerial humour, the perpetrators, who were among those tasked with reinserting the word 'Commonwealth' in legislation, decided to remain anonymous. First Parliamentary Counsel at the time, CK Comans, found the document amusing enough to keep it amongst his memorabilia.

Different Dimensions

Sheer volume of legislation impacted on the administration of the drafting function in the early 1970s. Advised by Comans, who was not inclined towards 'empire building', that it would be inordinately difficult to keep up with the new government's ambitious legislation program if drafters had to divide their time between Bills and subordinate legislation, and concerned that Parliamentary Counsel should be able to focus on the speedy provision of Bills, the Government separated this function from that of producing subordinate legislation.[7] The Legislative Drafting Division was created within the Attorney-General's Department especially to draft regulations, ordinances and other legislative instruments. As well as freeing OPC to concentrate on Bills work, the split was seen as a means to give priority to overcoming long-standing arrears in the drafting of subordinate legislation. It was promoted as likely to attract more recruits to legislative drafting, as they would have greater opportunities to move to other areas of the Department should they so desire.

Thirteen members of the staff of OPC were transferred with the function, and the Legislative Drafting Division was established with 29 positions. Senior Assistant Parliamentary Draftsman Noel Sexton was seconded to the Attorney-General's Department to manage the set-up of the new Division. While the new arrangements were announced in February 1973 and put into effect on 5 March that year, the change was not formalised (through amendments to the Parliamentary Counsel Act) until much later.

An attempt to have the legislation amended to reflect the redistribution of drafting functions was made in 1975. A Parliamentary Counsel Bill drafted and introduced that year also proposed to transfer Ministerial responsibility for OPC from the Attorney-General to the Prime Minister. Personally not in favour of the move the new Attorney-General, Kep Enderby, nonetheless presented the case for the Bill to the House of Representatives. Against the transfer of control, the Opposition argued that a move would erode the Attorney-General's position and traditional role as legal adviser to the government. The Bill was laid aside in the House in August 1975 after the Senate insisted on trying to include an amending provision that 'not less than two' drafters should be specifically assigned to do work for private members.

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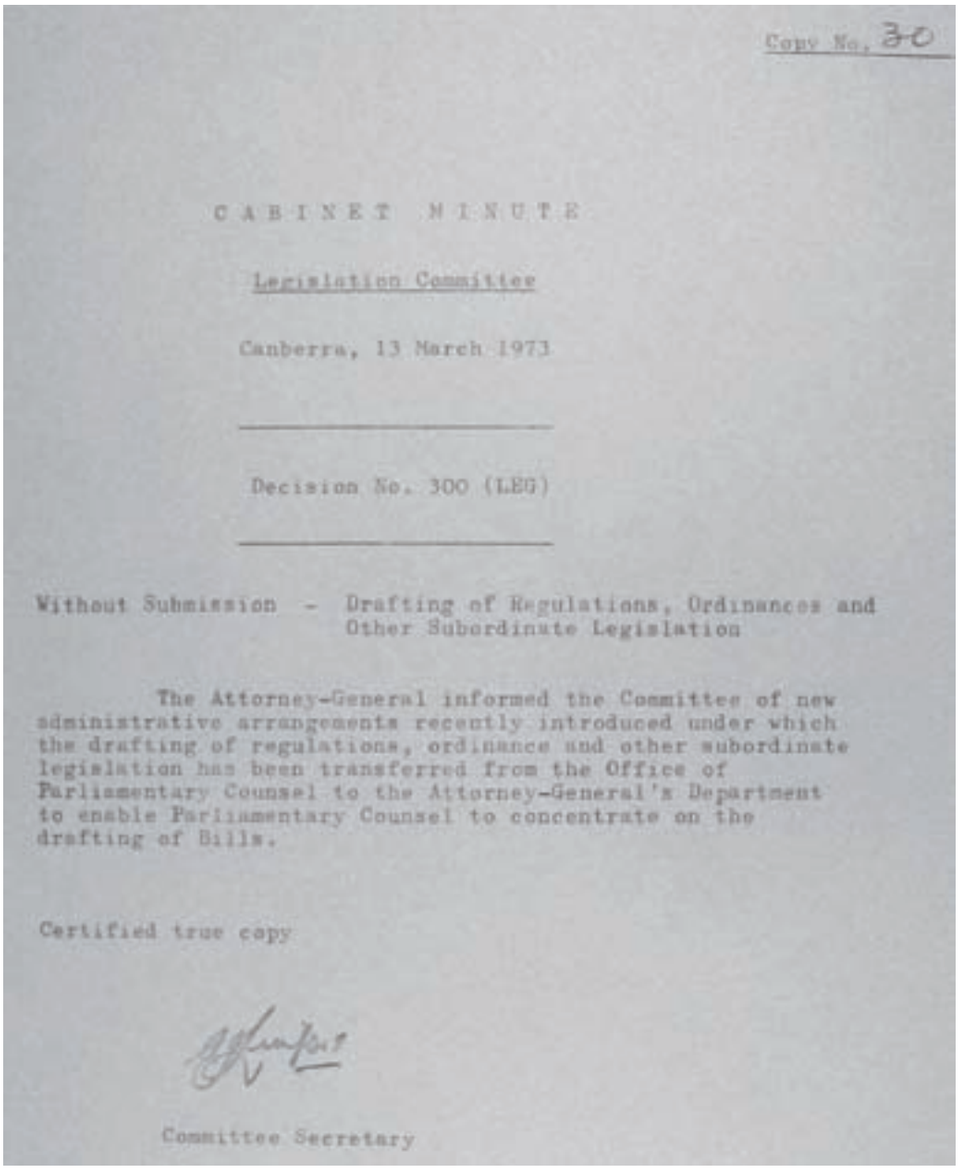
[7] Legislation Committee, Cabinet Minute, 13 March 1973. Cabinet Decision No. 300, March 1973.



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CABINET MINUTE

Legislation Committee

Canberra, 13 March 1973

Decision No. 300 (LEG)

Without Submission - Drafting of Regulations, Ordinances and Other Subordinate Legislation

The Attorney-General informed the Committee of new administrative arrangements recently introduced under which the drafting of regulations, ordinance and other subordinate legislation has been transferred from the Office of Parliamentary Counsel to the Attorney-General's Department to enable Parliamentary Counsel to concentrate on the drafting of Bills.

Certified true copy

Committee Secretary

Cabinet Decision No. 300 approved the transfer of responsibility for drafting of subordinate legislation from OPC to the Attorney-General's Department in March 1973.

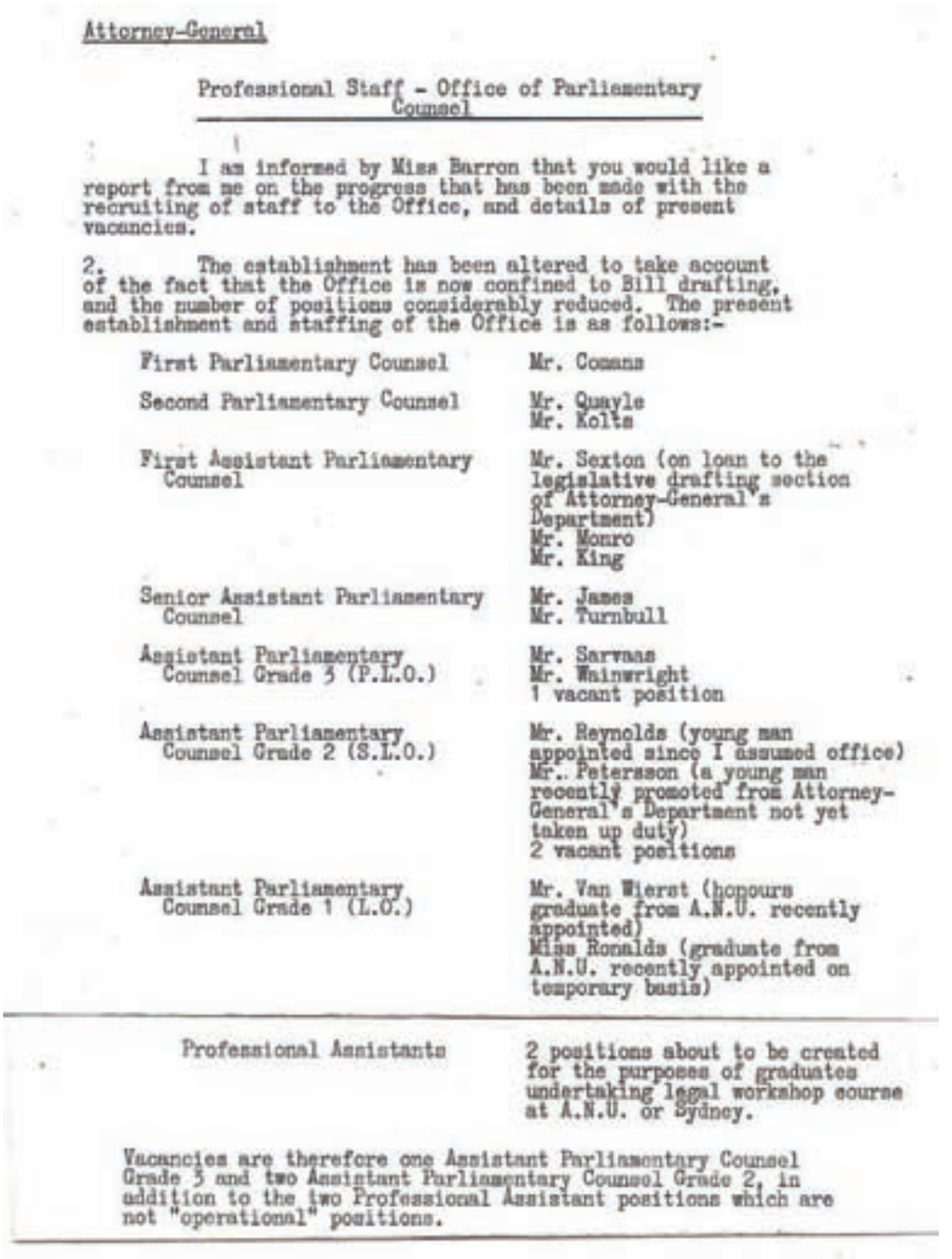
In October 1981 OPC was advised by the Department of Prime Minister and Cabinet that, in line with a Cabinet decision to legislate for standard basic reporting requirements for Commonwealth agencies, the Office would need in future to provide

an annual report. While drafting the necessary amendments to Acts governing all the agencies involved, the opportunity was taken to bring the legislative statement of OPC's functions into line with the administrative practice of the previous nine years. Following amendment of the Parliamentary Counsel Act by the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, OPC presented its first Annual Report to the Attorney-General for the 1982-1983 financial year. Until 1987-1988 the separate OPC report was published in the same volume as that of the Attorney-General's Department.

For reasons of efficiency and the need to concentrate on the priority of producing Bills, the practice of drafters attending Parliament during passage of legislation was discontinued in the Whitlam era. Traditionally a seat was provided for the drafter close to the Ministerial front bench – on the floor of the chamber in the physical sense, but roped off so it was not on the floor in the technical sense. A room especially for the drafters was also provided at Parliament House, even after the Secretary to Representatives of the Government in the Senate position was no longer filled. In attendance for the whole debate, but rarely required to provide advice, drafters would often be at Parliament House until the early hours of the morning and then were expected to put in long hours back at the office to keep up with their drafting work. The excessive expenditure of time and questionable value of the practice had been the subject of concern in Australian and overseas drafting offices for some years. Hassled by the Attorney-General to increase the speed of drafting Bills, Comans pointed out the amount of time expended by drafters on parliamentary sittings. The practice was summarily discontinued. Subsequently drafters would be present at the debate on a Bill only if this was specifically requested by a Minister.

Executive Assistant to First Parliamentary Counsel, Mary Ashford, using an IBM Selectric (golf ball) typewriter. As it was possible to read the text that had been typed from the carbon film ribbon used in these machines, during periods when Budget Bills were being prepared the ribbons were removed from all typewriters and locked up every night. Administrative Building 1980. [OPC photograph]

Some years later, in 1978, the House legislative committees asked for drafters to attend their meetings to advise them on amendments. In his response, then Attorney-General Peter Durack stipulated that Members would need to provide copies of proposed amendments to OPC in advance, so the appropriate drafter could be designated to give informed advice. The idea was dropped on the premise that not all Members were likely to brief themselves adequately to do this.



Attorney-General

Professional Staff - Office of Parliamentary Counsel

I am informed by Miss Barron that you would like a report from me on the progress that has been made with the recruiting of staff to the Office, and details of present vacancies.

2. The establishment has been altered to take account of the fact that the Office is now confined to Bill drafting, and the number of positions considerably reduced. The present establishment and staffing of the Office is as follows:-

First Parliamentary Counsel	Mr. Comans
Second Parliamentary Counsel	Mr. Quayle Mr. Kolts
First Assistant Parliamentary Counsel	Mr. Sexton (on loan to the legislative drafting section of Attorney-General's Department) Mr. Monro Mr. King
Senior Assistant Parliamentary Counsel	Mr. James Mr. Turnbull
Assistant Parliamentary Counsel Grade 3 (P.L.O.)	Mr. Sarvaas Mr. Wainwright 1 vacant position
Assistant Parliamentary Counsel Grade 2 (S.L.O.)	Mr. Reynolds (young man appointed since I assumed office) Mr. Petersson (a young man recently promoted from Attorney-General's Department not yet taken up duty) 2 vacant positions
Assistant Parliamentary Counsel Grade 1 (L.O.)	Mr. Van Wierst (honours graduate from A.N.U. recently appointed) Miss Ronalds (graduate from A.N.U. recently appointed on temporary basis)
Professional Assistants	2 positions about to be created for the purposes of graduates undertaking legal workshop course at A.N.U. or Sydney.

Vacancies are therefore one Assistant Parliamentary Counsel Grade 3 and two Assistant Parliamentary Counsel Grade 2, in addition to the two Professional Assistant positions which are not "operational" positions.

Drafting staff of OPC, after the transfer of responsibility for subordinate legislation to the Attorney-General's Department. Extract from a report by FPC Charles Comans to Attorney-General Lionel Murphy on 31 August 1973.

Removing Discrimination

Gradual dismantling of the 'White Australia' migration policy begun in 1949 was completed in the 1970s. Fears of invasion after the Second World War, and insufficient immigration from traditional sources, prompted a 'populate or perish' sentiment. Legislation continued to favour European migrants, on the basis that they would more easily fit into Australian society. In Australia's population of around eight million in 1947 only two per cent were born outside Australia, Britain and New Zealand. A revised Migration Act in 1958 introduced a simpler system of entry permits and abolished the controversial dictation test, previously applied to enable exclusion of people who could not answer questions in a specified language.

Increased by around 43 per cent from the end of the War, the population reached 10.5 million in 1961. Passage of the *Migration Act 1966* eroded the discriminatory migration policy which had prevailed since Federation. Enforcement of racial aspects of immigration law were prevented. Restrictions on the entry of non-European migrants were relaxed, allowing access to those from other continents, including refugees from Vietnam. The *Australian Citizenship Act 1973* introduced a policy of non-discrimination on the grounds of race, colour or nationality. Citizenship was made easier to attain, and international agreements relating to immigration and race were ratified. From 1975 citizens from Commonwealth countries were subject to the same visa requirements as other applicants. Selection of prospective migrants based on country of origin was removed from official policy in 1978.

Policies promoting the assimilation of Aboriginal people into the dominant culture continued for some years after the 1967 referendum. Protectionism and assimilation were replaced by policies of self-determination, adopted by successive federal governments from 1972. On 26 January (Australia Day) that year, as a focus for movements working towards recognition of land rights, an Aboriginal 'tent embassy' was erected on the lawns in front of Parliament House. Following gazettal of an amendment to the Trespass on Commonwealth Lands Ordinance, making it an offence to camp on unleased Commonwealth land within the city of Canberra, the embassy was removed by police in July 1972. Between March 1976 and August 1977 the National Aboriginal Consultative Committee set up an Aboriginal embassy at 26 Mugga Way, Red Hill, in the house built and originally occupied by Parliamentary Draftsman Martin Boniwell. Re-erected during periods of protest, the tent embassy remained on the Parliament House lawns intermittently until its twentieth anniversary in 1992 when it became a permanent fixture. In April 1995 the site was registered on the National Estate by the Australian Heritage Commission. The first land rights laws, embodied in the *Aboriginal Land Rights (Northern Territory) Act 1976,* established the basis upon which Aboriginal people in the Northern Territory could claim rights to land based on

traditional use or occupation. Apart from one section, the Act came into force on 26 January 1977.

Initially introduced on 21 November 1973, a Bill aiming to make the use of racial criteria for official purposes unlawful was redrafted three times and finally passed as the *Racial Discrimination Act 1975*. Giving effect to obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, Australia's first anti-discrimination laws aimed to protect people from prejudice on the grounds of race, colour, descent, national or ethnic origin and immigration status.

Ardent supporter of multiculturalism and champion of anti-discrimination laws as Minister for Immigration, Al Grassby was later appointed to administer the Racial Discrimination Act as Commissioner for Community Relations. In this role he worked from an office located next to that of OPC in the Administrative Building. Due to the convoluted layout of the building, encounters with him were more likely to be on the basis of him searching for a route back to his office rather than neighbourly passing in the corridor.

Reforming the Law

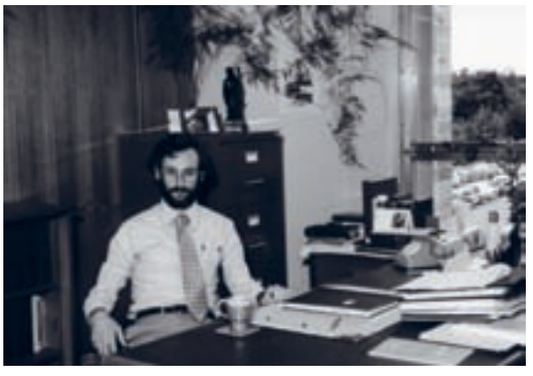
Swift drafting was demanded in April 1975 to prevent undue financial penalty for a Senator pending a High Court case. The five-clause *Common Informers (Parliamentary Disqualifications) Act 1975* was drafted, passed and assented to within 24 hours. Its effect was to displace a provision made by section 46 of the Constitution, relating to disqualification of members of the Parliament. Never availed of since Federation, the section provided that any Member or Senator found constitutionally incapable of sitting was liable to pay, to any person who sued for it, the sum of £100 for every day they sat in Parliament. Deemed to be 'archaic and out of proportion to the kinds of breaches of the disqualifying provisions that can occur in the complexities of modern life',[8] the fixed daily penalty was dropped. From commencement of the Act on the date of assent, 23 April 1975, no person was liable to pay any sum under section 46 of the Constitution and no suit was to be instituted, continued, heard or determined in pursuance of that section. The High Court subsequently found that the Senator (who had been granted leave of absence) was 'not ineligible' to be chosen, and did not at any time become incapable of sitting, as a Senator.[9]

Law reform agencies from the States and the Australian Capital Territory attended the first Australian Law Reform Agencies Conference (ALRAC) in April 1973. Participants at

[8] Australia, House of Representatives 1975, *Debates* vol. H. of R. 94, p. 1978.
[9] Re Webster [1975] HCA 22; (1975) 132 CLR 270 (24 June 1975) Barwick C.J.

the conference discussed uniform laws and the need for an Australian Law Reform Commission. When the second conference was held two years later they were joined by the Australian Law Reform Commission (ALRC), newly established under the *Law Reform Commission Act 1973*. Several senior OPC drafters attended the third ALRAC conference in May 1976. On this occasion Noel Sexton presented a paper on 'Legislative Drafting and Law Reform – Post Renton'. There was discussion of the need for 'a man' skilled in statutory drafting to be on law reform commissions, to prepare draft Bills relating to recommendations and avoid delays in presenting reports. A subsequent Senate Standing Committee on Legal and Constitutional Affairs inquiry into processing of law reform proposals, in its 1979 report 'Reforming the Law', recommended that ALRC reports should have detailed draft legislation attached to them, and that a drafter should be provided to the Commission. Stephen Mason was the first drafter appointed to work at the ALRC.

Justice Michael Kirby (the inaugural Chairman of the ALRC) and First Parliamentary Counsel Bronte Quayle discussed strategies to alleviate the isolation and enhance the career prospects of drafters appointed to the Commission. One of these was a temporary exchange of drafters on secondment. Stephen Mason worked in OPC on secondment in 1984. OPC drafter Vince Robinson spent three months at the ALRC in mid-1984, and Philippa Horner went there in 1985. Robinson reported in some detail on his exchange experience. He had met and worked with John Ewens, who was at the time a consultant to the Commission, finding him to be 'mellower in temper and sharper in perception' than he expected, and 'a born lateral thinker'. While he enjoyed having time to indulge in legal research, Robinson noted that in Sydney's smoggy, grimy and overcast winter he did miss the 'the better-tasting water and the crisp fresh air and openness of Canberra'.



Vince Robinson. Administrative Building 1980.
[OPC photograph]

Not Just Cricket

Over the decades various drafters demonstrated some prowess in cricket. Sir Robert Garran, George Knowles, Martin Boniwell, Gilbert Castieau, Joe Tipping, John Gamble, Louis Legg, Les Lyons and Horace Sandars all featured in the Attorney-General's Department list of batting and bowling averages for 1918 to 1931. Laurie Thornber, who had previously managed the University of Western Australia cricket team, was appointed honorary secretary of the Federal Capital Territory Cricket Association in August 1932, soon after his arrival in Canberra.

Drafters made a big contribution to the Legal Officers' resounding victory in an Attorney-General's Department cricket match (Legal Officers vs The Rest) on 28 February 1960. The *Monthly Bulletin for Legal Officers* reported on 'splendid batting by top-weight carrier Noel Sexton' who scored 40 runs. Jim Monro 'atoned for his batting failure with an excellent bowling display'; while 'Acting Secretary Ewens quietly nabbed a couple of wickets later in the piece'. Bronte Quayle's mate, Jack Richardson (later Professor of Law at the Australian National University and the first Commonwealth Ombudsman), was said to have 'kept wickets with the agility of a grasshopper and the effectiveness of a chaff bag'.

Ewart Smith was a cricketer of some renown. As a member of the Manly Club in Sydney Grade Competition before and after the Second World War, he played with and against various Australian Test cricketers. Playing District Cricket in Canberra, Smith led the Northbourne Club to several premierships, and captained the Australian Capital Territory representative side. His Club teammates included a young Bob Hawke (Prime Minister from 1983 to 1991) and fellow drafter Alan Cumming Thom (later Clerk of the Senate from 1982 to 1988).

Not so talented on the field, some later drafters relied on their occupational skills to achieve victory. Faced with a match against the General Counsel Division of the Attorney-General's Department in March 1987, they took the precaution of securing 'passage' of the *Cricket Match (Ensurance of Desired Result) Act 1987*. The core provision of the four-section Act stated:

> *4 (1) In this section, cricket match means the cricket match played on 3 March 1987 between the Office of Parliamentary Counsel and the General Counsel Division of the Attorney-General's Department.*
>
> *(2) If, but for this section, the Office of Parliamentary Counsel would not have won the cricket match, the cricket match shall be deemed, by force of this section, to have been won by the Office of Parliamentary Counsel.*

Proving themselves equal to the challenge, the General Counsel team responded with a 'judgement from the High Court'. Declaring the Act to be invalid, and the cricket match to have been won by the General Counsel Division, the 'Court' awarded costs against the Respondent (OPC) 'with exemplary damages in the amount of two cases of beer'. The 'Judge' noted:

> *I am considerably disturbed that legislation on this matter should have been drafted by the Respondent without any evidence of satisfactory declarations of interest being made pursuant to the well known procedures in that regard existing in the Australian Public Service. It is a principle of equity that litigants must come before this court with clean hands. In this matter the Respondent's hands reek of an oil drum.*

An 'appeal to the Privy Council' resulted in a decision which, *inter alia*, found:

> *The appellants write Acts of Parliament. The respondents decide what those Acts mean. Rather like a court. Who contributes more to 'good government', those who prepare the statutes or those who interpret them? The answer is obvious.*
>
> *The Act is invalid for a reason that may be plainly stated. It is not cricket. It is impossible for a game of cricket to be won other than by the joyous ring of leather against willow, for a game that is won by other means is no longer cricket.*
>
> *This case is no mere storm in a teacup; it is a tempest in a thimble. Argument raged before us for months. Every conceivable point (except the one that mattered) was explored at enormous length. We began to long for the brevity of Dr. Evatt. And what was the subject of all this misplaced ingenuity? The result of a game of cricket! Whoever dreamt up this appeal obviously takes sport far too seriously.*

Disallowance of the *Cricket Match (Ensurance of Desired Result) Act 1987* was duly 'gazetted' on 2 March 1987.

Territorial Administration

Canberra continued to grow at a rapid rate. On average the city's population increased by more than 50 per cent every five years from 1955 to 1975. Still short of 200 000 by 1976, the population of the Australian Capital Territory (ACT) reached 250 000 a decade later. The release of residential land increased as the new town centres at Woden, Belconnen and Tuggeranong were developed. Building of another satellite town at Gungahlin, north of Canberra City, was begun in 1975 with the establishment of the Mitchell industrial estate. Tertiary educational facilities were enhanced, with construction of the Australian Defence Force Academy begun in 1981, and the evolution of the Canberra College of Advanced Education to the University of Canberra in 1990. The Australian Institute of Sport at Bruce was officially opened on 26 January 1981, and the Bruce Stadium hosted World Cup Athletics in October 1985. Along with other Canberra residents, many drafters were keen followers of or participants in the continually expanding range of sports available in the capital. Lunchtime and

recreational activities for the staff of OPC included organised games, various forms of boating, motor sports, jogging and energetic walks around the Parliamentary triangle, or on a circuit incorporating the Commonwealth and Kings Avenue bridges spanning Lake Burley Griffin. Opened by Queen Elizabeth II on 26 May 1980, the High Court building joined other national institutions on the shores of the Lake.

Moves towards self-government of various Australian territories were made in the mid-1970s. In 1974 the Australian Capital Territory was allocated two Senate seats; and its House of Representatives seat was split into two Divisions, named Canberra and Fraser.[10] The *Australian Capital Territory Representation (House of Representatives) Act 1974* provided for the second Member for the ACT. In existence since 1930, the ACT Advisory Council became an elected 18-member Legislative Assembly. Changed to a House of Assembly in 1979, this advisory body was dissolved in 1986, prior to the passage of the *Australian Capital Territory (Self-Government) Act 1988*. The Northern Territory's first fully elected Legislative Assembly met in November 1974 – just weeks before Cyclone Tracy devastated Darwin on Christmas Eve. Papua New Guinea was granted independence in 1975.

By this time all Territory ordinances were being drafted in the Attorney-General's Department rather than by OPC. When the function of drafting subordinate legislation was transferred to the Department in 1973 the drafting section in Darwin was transferred with it. The move met with some protest in the Northern Territory. In a formal minute to FPC Charles Comans, the then head of the Territory drafting section, Ted Tudor, reported that the Minister for the Northern Territory had opposed the transfer. The Minister believed that Northern Territory ordinances were more like Bills and should not be classed as 'subordinate' legislation, that drafters in OPC would be more objective than those in a department where related policy was made and that the move from OPC was inconsistent with avowed government aims to give the Northern Territory more self-government. Tudor relayed his own concerns about the likelihood of an enforced move from OPC jeopardising his drafting career. In a covering handwritten letter, Tudor told Comans that his former staff in Darwin felt a little as if they had been abandoned, expressing the hope that the reduction in staff would not reduce the status of FPC to lower than Permanent Head. Comans had, however, advised the Attorney-General that management of the Darwin drafting section (supervision of which was shared with the Crown Law Officer) was a time-consuming diversion from OPC's primary work of producing Bills. He argued that the section more logically belonged

[10] Covering Canberra on the northern side of Lake Burley Griffin and the Molonglo River, and Commonwealth territory at Jervis Bay, the seat was named after James Reay (Jim) Fraser. A member of the ACT Advisory Council from 1949 to 1951, he was the Member for the ACT from 1951 to 1970.

with the Attorney-General's Department which was already providing management services to the Northern Territory office.

Remaining with the Department until establishment of self-government in the Northern Territory in 1978, the Darwin drafting section then became the Legislative Drafting Office, initially attached to the Northern Territory Department of Law. Acts passed by the Northern Territory Legislative Assembly in the first two decades after self-government used the enacting words 'Be it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth'. OPC drafted the Self-Government Act, and the Public Service Amendment Bill (No. 2) 1976 which safeguarded the rights of Commonwealth public servants affected by transfer to the Northern Territory public service. In 1978 senior drafters in OPC provided advice on the Financial Administration and Audit Ordinance for the Northern Territory. By then Ted Tudor was First Assistant Secretary of the Legislative Drafting Division in Canberra and Bernie Sutherland was the most senior drafter in Darwin.

Drafting for PNG Independence

Independence to Papua New Guinea was granted under the *Papua New Guinea Independence Act 1975*. In his article, 'Drafting Offshore', written for *PC News and Views* in 2001, former First Parliamentary Counsel Ian Turnbull recalled the drafting preparations for independence:

> *Early in 1973, Charles Comans QC had been First Parliamentary Counsel for a few months. The new Whitlam Government was beginning to implement its enormous legislative program, and Charles was worried about drafting resources. One item was the proposal that Papua New Guinea (PNG) was to become independent. He hadn't thought this would be a particularly large legislative task, but one day a mass of instructions six inches thick arrived on his desk. These were the detailed instructions prepared over many months by the Department of External Territories under Allan Kerr.*
>
> *Charles was appalled by the size of the task, and couldn't see how it could be fitted into the parliamentary program. His most senior officers were all busy with more immediate tasks, so he asked me to look at the instructions and discuss them with him.*
>
> *Fortunately I was able to reassure him. On closer examination, there was not much original drafting to be done. The bulk of the instructions dealt with the amendments of Commonwealth laws that would be consequential on the independence of PNG.*

I remembered how the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 had delegated wide power to amend legislation, so I suggested to Charles that we draft a short Act giving power to make regulations modifying the application of Commonwealth Acts to PNG. This was heresy in those days, and Charles was uneasy about the wide powers conferred, but it seemed the only practical course to take. I drafted him a Bill, using as a model the infamous clause from the British Order in Council. He was delighted. He didn't have to concern himself with the details, and the work didn't have to be done in time to fit in with the parliamentary program.

Some time later when the Office of Legislative Drafting was drafting the regulations, Jean Baker complained bitterly to me about what she called buck-passing by OPC. I was very sympathetic, but forbore to tell her it was my idea.

In due course the time came to draft the Independence Bill, and Charles gave the job to me. This was very simple, because it didn't follow the usual pattern of the former dependencies of Britain, where Britain made a single law granting independence and establishing the new Constitution. The people of PNG wanted their Constitution to be 'autochthonous': it had to originate of its own force from PNG, and not from a grant by Australia or anyone else.

The new Constitution had been drafted by Joe Lynch, who had been chief Parliamentary Draftsman in PNG for many years, but was then retired. We had been sent a draft as a matter of courtesy, but our approval was not requested and neither was it necessary.

When the draft Independence Bill was approved by Allan Kerr, he recommended that I accompany him for a meeting with the responsible Minister in PNG. I was delighted, because I had long been resigned to the fact that drafters seldom get the chance to travel. …

The next morning we had our meeting with the Minister. It was quite brief. He had seen a draft of the Bill and was happy with it. Allan's instructions had been excellent: Australia was not to be seen to be conferring anything on PNG – the Act was merely to withdraw (or 'oust', as the British would say) any jurisdiction, rights or powers over PNG, so that the new Constitution could be initiated by a purely local process. The Minister said very little, beyond emphasising that the Constitution was to be autochthonous.

[Australasian Legislative Counsel newsletter, *PC News and Views* Issue 6. January 2002 pp. 11-13.]

Double Dissolutions

Beleaguered by a struggling economy, soaring inflation and an increasing trade deficit, the Whitlam government also had problems with its legislation program. Bent on reform, it started its first term in 1972 with a majority of seven in the House of Representatives and a minority in the Senate. By April 1974 six Bills introduced in the House of Representatives but not passed by the Senate were deemed to have met the constitutional requirements to trigger a double dissolution, and the Senate was threatening to prevent passage of three 1973-1974 Appropriation Bills. When the Governor-General agreed to a double dissolution on condition that provisions were made for carrying on the public service, the Appropriation Bills and two Supply Bills for 1974-1975 were passed before Parliament was dissolved. Following the election on 18 May 1974, the Labor government was returned with its majority in the House reduced to five, and 29 of the 60 Senate seats. Declared as urgent on their next introduction, the six double dissolution Bills were negatived by the Senate in July and consequently were considered to have fulfilled requirements to be submitted to a joint sitting of both Houses convened by the Governor-General.

Before the joint sitting could begin on 6 August 1974, amendments to various laws relating to proceedings in Parliament needed to be drafted and passed to enable the special procedures required for the joint sitting. The *Evidence Act 1905* was amended to provide for the official signature of the Member presiding at the joint sitting, and the formal record of proceedings to be recognised by the courts. Protection against actions for defamation or other legal proceedings as applied in ordinary sittings was extended to the publication of proceedings and documents laid before the joint sitting by amendment to the *Parliamentary Papers Act 1908*. Broadcasting and televising of the joint sitting proceedings was permitted under amendments to the *Parliamentary Proceedings Broadcasting Act 1946*, which also afforded normal protection to the broadcasts and enabled the Parliamentary Joint Committee on the Broadcasting of Parliamentary Proceedings to make other pertinent determinations. This first televised coverage of Australian parliamentary debates was broadcast in colour by the Australian Broadcasting Commission, some months before the general introduction of colour television in March 1975. A complete sound recording was also made.

In the only joint sitting of the Australian Parliament ever held for this reason, the question put to all members of both Houses was that the proposed laws, in the form last passed by the House of Representatives, be affirmed. Debated and passed on 6 and 7 August 1974, all six Acts were affirmed by an absolute majority, as required by the Constitution. Cases later brought before the High Court challenged the validity of the joint sitting and most of the laws passed by it. Only one of these, the *Petroleum and*

Minerals Authority Act 1973, was found to be not within the scope of section 57 of the Constitution, and therefore not a valid law of the Commonwealth.

Twenty-one Bills providing the technical grounds for a double dissolution under section 57 of the Constitution were rejected by the Senate between July and November 1975. During this period two government Ministers were implicated in a loans scandal, attempting to bypass standard Treasury procedures to borrow money from overseas. The Opposition, disagreeing with numerous other legislative proposals, used its slender majority in the Senate to delay the 1975-1976 Appropriation Bills. Resolutions expressing lack of confidence in the Government were passed in the Senate in late October 1975, while the House of Representatives agreed to motions affirming faith in the government and condemning the actions of the non-government parties. After weeks of political tension, and with the imminent threat of insufficient money to maintain government services, matters reached a dramatic climax.

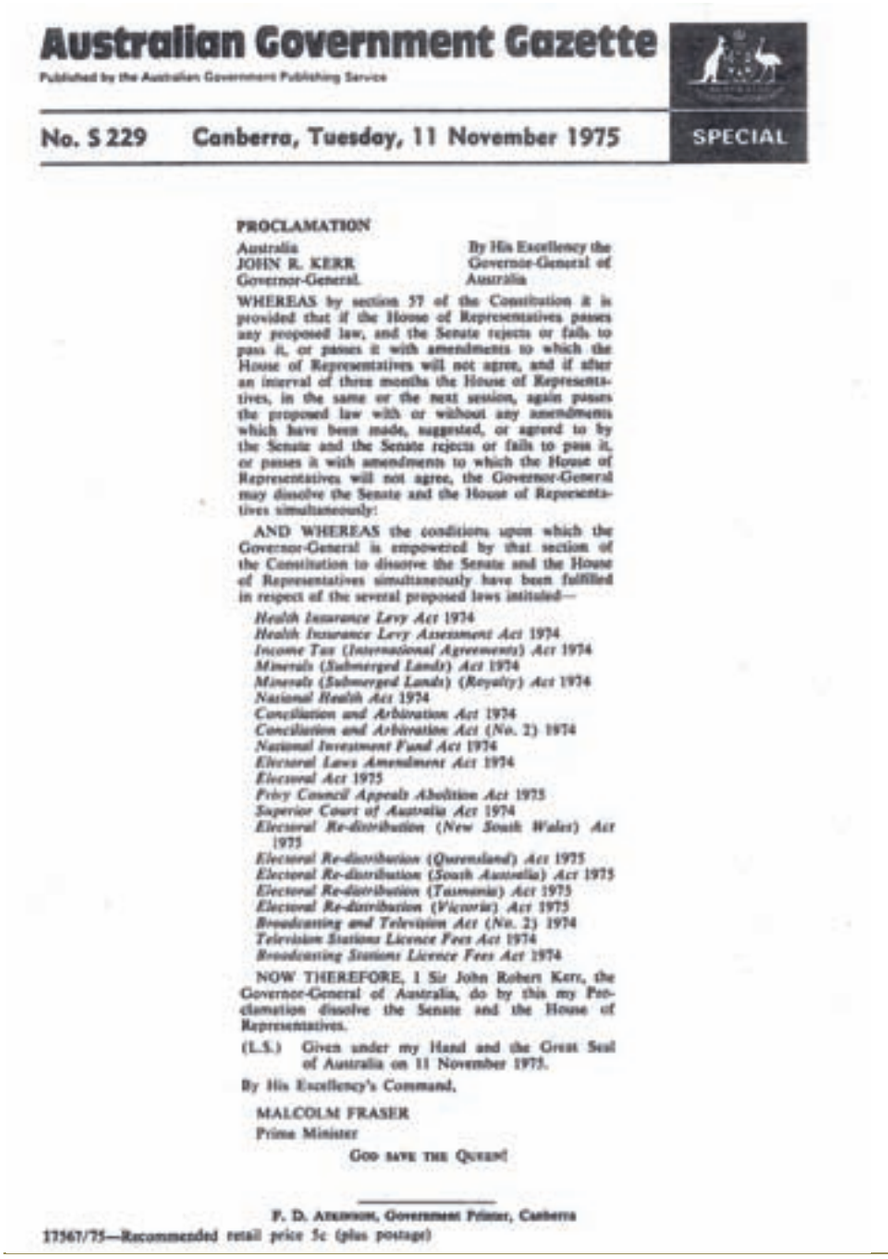
During a meeting on 11 November 1975 (pre-arranged to discuss a half-Senate election) Governor-General Sir John Kerr instead terminated Gough Whitlam's commission as Prime Minister, and the appointments of all his Ministers. Just before Malcolm Fraser announced in the House that he had then been commissioned by the Governor-General to form a caretaker government, the Senate passed the crucial Appropriation Bills. A resolution immediately put by Whitlam was agreed by the House and the Speaker was despatched to advise the Governor-General of its intent – that since the deadlock on the Budget Bills had been resolved Whitlam, as leader of the majority party, had the confidence of the House and should be re-commissioned to form a government. Minutes before the meeting arranged with the Speaker, the Governor-General, on Fraser's advice, dissolved both chambers and, in accordance with practice, the double dissolution proclamation was read by his secretary on the steps of Parliament House. On the same day the Governor-General made public his reasons for the dismissal. The Speaker's subsequent petition to the Queen to restore the Whitlam government to office was not granted, on the grounds that under the Australian Constitution the prerogative powers of the Crown were firmly placed in the Governor-General as its representative. Held on 13 December 1975 the general election resulted in a convincing win for the Coalition, with the Fraser government holding a majority of seats in both Houses. The new government did not reintroduce any of the Bills which had provided the grounds for the double dissolution.

As First Parliamentary Counsel, Charles Comans was involved in the historic events of 11 November 1975. He drafted the double dissolution proclamation which referred to the provisions of section 57 of the Constitution; cited the 21 Bills considered to satisfy these provisions; and dissolved the Senate and the House of Representatives. Anticipating the possibility of Whitlam calling another quick election, the Secretary to the Attorney-General's Department, Clarrie Harders, had directed that a list be kept of

the Bills meeting the technical requirements for a double dissolution.[11] Former drafter Ewart Smith, by then Deputy Secretary to the Department, monitored the situation and had the list of Bills ready. Thanks to this forethought, the urgent document was able to be speedily drafted, typed and run across the lawns to Parliament House for Malcolm Fraser's signature. Comans himself delivered the paper to Fraser (on the grounds that he was likely to run faster than Solicitor-General Maurice Byers), then secured a position at the back of the crowd gathered around the steps of the House, in time to hear the Governor-General's secretary, David Smith, read the proclamation. The 1975 proclamation differed from that announcing the double dissolution of the previous year, from which Whitlam had removed the closing words 'God Save the Queen'. Restoration of the phrase at the end of the 1975 proclamation prompted his much publicised words: 'Well may we say "God Save the Queen", because nothing will save the Governor-General'.[12]

Charles Comans receiving his CBE from Governor-General Sir John Kerr. Government House 31 August 1977. [Photograph courtesy of Charles Comans]

[11] E Smith, op.cit., p. 68.
[12] ibid p. 61.



Australian Government Gazette

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No. S 229 Canberra, Tuesday, 11 November 1975 SPECIAL

PROCLAMATION

Australia
JOHN R. KERR
Governor-General.

By His Excellency the Governor-General of Australia

WHEREAS by section 57 of the Constitution it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

AND WHEREAS the conditions upon which the Governor-General is empowered by that section of the Constitution to dissolve the Senate and the House of Representatives simultaneously have been fulfilled in respect of the several proposed laws intituled—

Health Insurance Levy Act 1974
Health Insurance Levy Assessment Act 1974
Income Tax (International Agreements) Act 1974
Minerals (Submerged Lands) Act 1974
Minerals (Submerged Lands) (Royalty) Act 1974
National Health Act 1974
Conciliation and Arbitration Act 1974
Conciliation and Arbitration Act (No. 2) 1974
National Investment Fund Act 1974
Electoral Laws Amendment Act 1974
Electoral Act 1975
Privy Council Appeals Abolition Act 1975
Superior Court of Australia Act 1974
Electoral Re-distribution (New South Wales) Act 1975
Electoral Re-distribution (Queensland) Act 1975
Electoral Re-distribution (South Australia) Act 1975
Electoral Re-distribution (Tasmania) Act 1975
Electoral Re-distribution (Victoria) Act 1975
Broadcasting and Television Act (No. 2) 1974
Television Stations Licence Fees Act 1974
Broadcasting Stations Licence Fees Act 1974

NOW THEREFORE, I Sir John Robert Kerr, the Governor-General of Australia, do by this my Proclamation dissolve the Senate and the House of Representatives.

(L.S.) Given under my Hand and the Great Seal of Australia on 11 November 1975.

By His Excellency's Command,

MALCOLM FRASER
Prime Minister

GOD SAVE THE QUEEN!

F. D. ATKINSON, Government Printer, Canberra

17567/75—Recommended retail price 5c (plus postage)

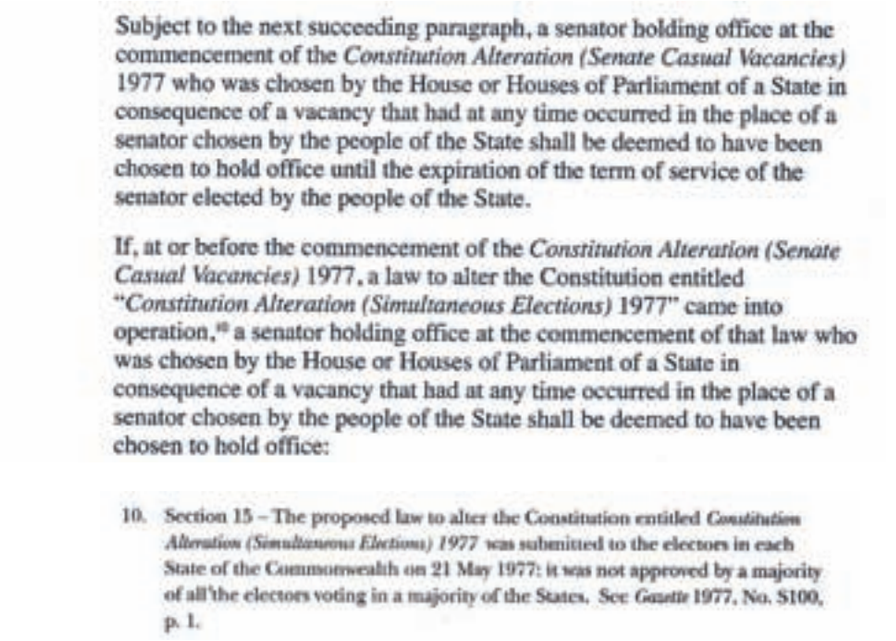
Extract from the Australian Government Gazette showing the proclamation drafted by Charles Comans. The Governor-General's Secretary, David Smith, read the proclamation to a crowd gathered on the steps of Parliament House on 11 November 1975.

1977 Referendum

Constitutional issues, including the noteworthy deviation from supposed tradition which occurred in 1975, were subjected to frequent debate. A series of meetings of the Australian Constitutional Convention was held between 1973 and 1985 – in Sydney in 1973, Melbourne in 1975, Hobart in 1976, Perth in 1978, Adelaide in 1983 and Brisbane in 1985. Ewart Smith served as legal secretary to the Convention. Originally convened by Victoria, which invited other governments to jointly consider problems of Australian federalism, the Convention proposed a number of amendments to the Constitution. Four constitutional alteration Bills, drafted by Charles Comans, were put to a referendum on 21 May 1977. Three of them were approved by the electorate, the fourth was rejected. One which succeeded was the *Constitution Alteration (Retirement of Judges) 1977*, which introduced a compulsory retirement age of 70 for all federal judges. Altering section 72 of the Constitution, this amendment was based on a 1976 recommendation made by the Senate Standing Committee on Legal and Constitutional Affairs and accepted by the Australian Constitutional Convention. It aimed to maintain 'vigorous and dynamic' courts, enhance judicial career paths and avoid the necessity of removing judges who became unfit for office through declining health.

Another question put to the referendum arose from a controversy over casual Senate vacancies in 1975. The 'yes' case for the proposal described the amendment as necessary to ensure that the voters' choice of political party could not be changed as a result of a resignation or death of a Senator. There was no 'no' case submitted. Approved with a total 73.3 per cent 'yes' vote, the *Constitution Alteration (Senate Casual Vacancies) 1977* replaced section 15 of the Constitution. The amendment essentially preserved the party balance from one Senate election to the next.

A proposed amendment relating to holding simultaneous elections for the House of Representatives and the Senate was rejected at the 1977 referendum. Passage of the Constitution Alteration (Simultaneous Elections) Bill had only been achieved following a suspension of standing orders, after the initial vote on its third reading did not attract an absolute majority as required by the Constitution. The division bells had malfunctioned, not ringing for a full period and preventing Members from participating in the division. Passed by an absolute majority in the House when the question was put again, the Bill met with the approval of voters in only three states – New South Wales, Victoria and South Australia. When the proposal was put to referendum again in 1984, only New South Wales and Victoria voted in favour. Had it been successful, it would have impacted on the Senate casual vacancies legislation. Reference to the proposed Constitution Alteration (Simultaneous Elections) law was incorporated in section 15 of the Constitution. Some published versions of the Constitution subsequently included a note specifying that the proposed law was not approved at referendum.



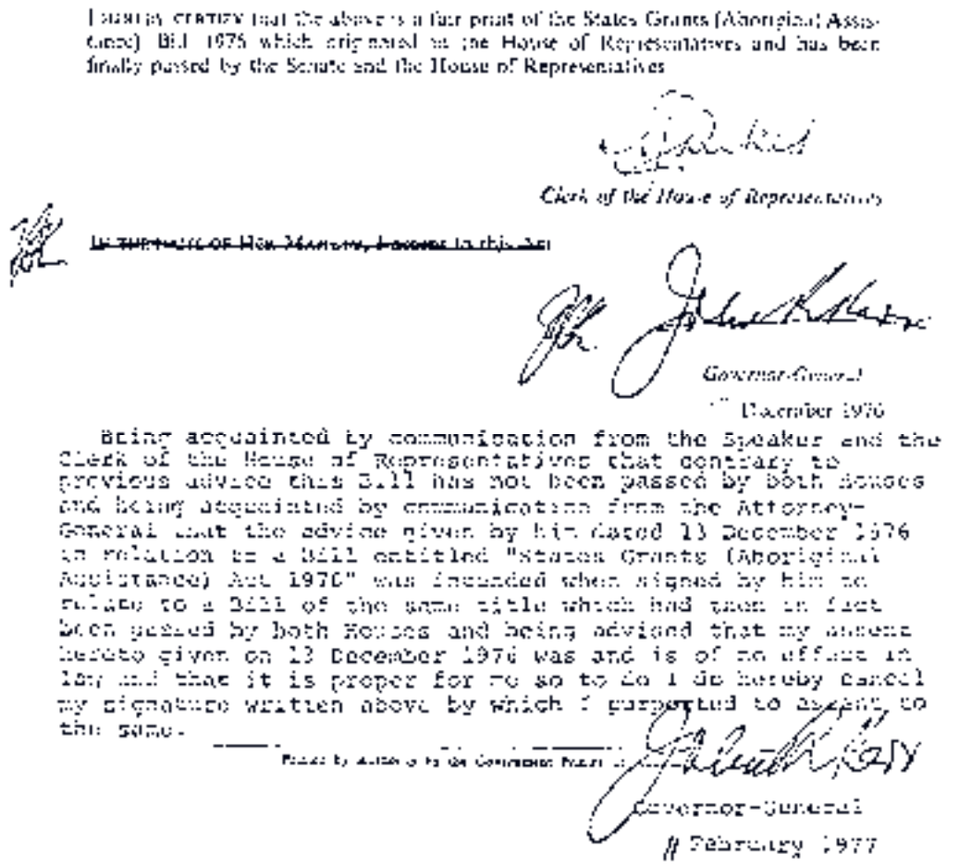
Subject to the next succeeding paragraph, a senator holding office at the commencement of the *Constitution Alteration (Senate Casual Vacancies)* 1977 who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office until the expiration of the term of service of the senator elected by the people of the State.

If, at or before the commencement of the *Constitution Alteration (Senate Casual Vacancies)* 1977, a law to alter the Constitution entitled "*Constitution Alteration (Simultaneous Elections)* 1977" came into operation,[10] a senator holding office at the commencement of that law who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office:

10. Section 15 – The proposed law to alter the Constitution entitled *Constitution Alteration (Simultaneous Elections) 1977* was submitted to the electors in each State of the Commonwealth on 21 May 1977; it was not approved by a majority of all the electors voting in a majority of the States. See *Gazette* 1977, No. S100, p. 1.

Extract from section 15 of the Constitution explaining the impact of the proposed law relating to simultaneous elections, and the accompanying note recording the unsuccessful outcome of the referendum on this issue.

Approved by the referendum, the *Constitution Alteration (Referendums) 1977* gave residents of the Australian Capital Territory and the Northern Territory the right to vote on amendments to the Constitution. Ten years before Northern Territorians, resentful at being denied a vote in the 1967 referendum on Commonwealth power to legislate for Aboriginal people, had demonstrated in Alice Springs. The restriction on their voting rights existed because of the lack of a reference to Territory voters in section 128 of the Constitution. An attempt to amend section 128 was made in 1974, when it was linked to another question relating to carrying constitutional amendments with just half, instead of a majority, of the States voting in favour. Rejected in 1974, the voting rights proposal was relatively uncontroversial in 1977. It achieved a national 'yes' vote of 77.7 per cent, despite comparatively high 'no' votes in Queensland and Tasmania. Representation in Federal Parliament was increased from 183 to 189 in 1975, to allow the Northern and Australian Capital Territories each to have two Senators and one Member in the House of Representatives.



I HEREBY CERTIFY that the above is a fair print of the States Grants (Aboriginal Assistance) Bill 1975 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives

Clerk of the House of Representatives

IN THE NAME OF Her Majesty, I assent to this Act

Governor-General

13 December 1976

Being acquainted by communication from the Speaker and the Clerk of the House of Representatives that contrary to previous advice this Bill has not been passed by both Houses and being acquainted by communication from the Attorney-General that the advice given by him dated 13 December 1976 in relation to a Bill entitled "States Grants (Aboriginal Assistance) Act 1976" was intended when signed by him to relate to a Bill of the same title which had then in fact been passed by both Houses and being advised that my assent hereto given on 13 December 1976 was and is of no effect in law and that it is proper for me so to do I do hereby cancel my signature written above by which I purported to assent to the same.

Passed by Australia to the Commonwealth Parliament

Governor-General

11 February 1977

Two Bills entitled ‘States Grants (Aboriginal Assistance)’ were put before Parliament in late 1976. On 13 December the Speaker, Billy Snedden, inadvertently requested the Governor-General’s signature on a Bill which had been introduced and passed by the House of Representatives but not by the Senate, instead of the Bill of the same name which had been passed by both Houses. After obtaining a joint opinion from the Attorney-General and the Solicitor-General about how best to resolve this abnormal situation, the Speaker asked the Governor-General to formally cancel his assent to the wrong Bill.

Able to boast of having drafted all five referendum proposals approved during the course of his career, Charles Comans retired on 4 February 1977. He was succeeded as First Parliamentary Counsel by Bronte Quayle, with Jim Monro appointed as Second Parliamentary Counsel on 5 February.

Training Legislative Drafters

Under the combined leadership of Charles Comans and Bronte Quayle, who had responsibility for much of the management of the Office while he was Second Parliamentary Counsel, a formalised 'pairs' system for drafters evolved. The system was based on long-standing practice in the United Kingdom where a junior lawyer (traditionally known as a 'devil') was paired with a senior responsible for their supervision and training. Easier to arrange after OPC became responsible for drafting only Bills, the pairs system was introduced from early 1973. Basic concepts of the system were that all legislation should be worked on by at least two drafters, and that new recruits would learn to draft by working with an experienced senior on real drafting work. Under the system, which became fundamental to the operation of the Office, each Bill would be allocated to a particular pair which would be responsible for the drafting of several Bills at a time. Pairings were often for substantial periods, but were changed at varying intervals under various First Parliamentary Counsel.

Returning to OPC as a consultant drafter after he retired in 1977, Charles Comans was able to focus on drafting without worrying about running the Office. Administrative Building 1980. [OPC photograph]

With OPC's resources stretched to the limit coping with the legislation program, the recruitment and training of capable drafters continued to cause concern. Common problems with attracting, developing and retaining the right sort of people for drafting work were discussed at SCAG meetings, and became a recurring theme at meetings of Commonwealth Law Ministers. While many experienced drafters believed that the only effective way of training was by the 'master-apprentice' method, attempts were made to establish formal education programs for drafters. In January 1973 the Commonwealth Secretariat in London appointed several consultants, including the recently retired John Ewens, to visit all the regions of the Commonwealth to ascertain the legislative drafting needs and associated training requirements of various governments. Then Second Parliamentary Counsel, Bronte Quayle attended a seminar with representatives of other developed Commonwealth countries in London in March 1974, to discuss the findings

of the appraisal tours and to share experiences and ideas for overcoming common challenges.

There was general agreement that status, financial rewards and career structures for the drafting profession needed to be enhanced to attract top-class lawyers and encourage them to stay. Also stressed was the importance of a conducive working environment, mentoring, good support staff, first-rate library facilities and opportunities for collaboration with other drafters. At that stage Canada was the only Commonwealth country with an established formal drafter training program – a course for eight people run at Ottawa University by former Canadian Chief Parliamentary Counsel, Dr Elmer Driedger. Attorney-General Lionel Murphy was very keen that Australia should have a similar facility, both to train its own supply of drafters and to provide assistance to developing countries. A Bill to establish a specialist body to do this had already been drafted before Quayle attended the London seminar. The Legislative Drafting Institute Bill was introduced in December 1973.

From 19 December 1972 to 10 February 1975, Senator Lionel Murphy was Attorney-General in the Whitlam government. The huge volume of legislation drafted during his term included major reforms to family law, administrative law, trade practices and legal aid. The last politician appointed to the High Court, Justice Murphy remained on its bench from February 1975 until his death on 21 October 1986.

[Photograph courtesy of the Attorney-General's Department]

Passed amid high hopes that the new body corporate would provide a panacea for a range of drafting problems, the *Legislative Drafting Institute Act 1974* was assented to on 10 April 1974 and proclaimed to commence on 9 December that year. Ewart Smith (at one stage put forward by Clarrie Harders as a potential director for the Institute) provided briefing on the Bill for the Attorney-General. Lionel Murphy was passionate in his belief that this experiment would be successful in overcoming the acute shortage of drafters for both the Commonwealth and the states. Creation of the Institute was presented as another step forward in a reform process begun with the establishment of OPC and continued with the formation of the separate Legislative Drafting Division. Murphy anticipated plenty of co-operation from both OPC and the Australian National University in the venture. Dr Driedger had been consulted extensively on the Canadian experience and was actually present in the public gallery of the Senate in December 1973 when the Bill was being debated.

Basically supportive, the Opposition agreed to the Legislative Drafting Institute Bill without amendment. Expressing satisfaction that research into methods and techniques of legislative drafting was to be part of the Institute's charter, Member for Kooyong Andrew Peacock suggested that 10 years' operation of the Institute should be enough to train sufficient drafters. Concurring with the approach during a later debate on proposed amendments to the Parliamentary Counsel Act in 1975, Member for Wentworth Bob Ellicott commented that he hoped soon to be 'embarrassed by the number of prospective parliamentary draftsmen'. Supporting the establishment of the Institute, Bill Wentworth as always took the opportunity to express his wish that the new legislation would lead to greater simplification in drafting, reduce bottlenecks and facilitate more efficient consolidation of laws. Registering a protest that the Institute Bill, in a climate of pressure on legislation, was being unduly rushed through, former Attorney-General Senator Ivor Greenwood raised the only substantial questions. He asked whether the concept would be given best expression by vesting all the authority of the Institute in one man. The Bill provided for the Director to have wide powers to organise staffing, employ consultants and devise the objectives of this important and formative program. Noting the Institute's significant role in maintaining high drafting standards, Senator Greenwood remarked on the absence of a governing council or commission, and on the fact that no degree would be conferred by the training program.

Legislative Drafting Institute

Noel Sexton was appointed as Director of the Legislative Drafting Institute from 9 December 1974. A classroom, an office and a small library were set up at Level 5 of the Civic Permanent Building in Akuna Street in the city, and staff were recruited. At its peak the Institute employed eight people in addition to the Director, including an assistant director, a registrar, an accounts clerk and a librarian. Course sizes were limited to 10 participants, to enable intensive personal tuition. Courses consisted of a mix of formal classes and practical drafting exercises, with visits to institutions such as the Australian Law Reform Commission. Lectures and seminars were given by the Director, some OPC drafters, Attorney-General's Department officers, academic staff from the Australian National University and other esteemed lawyers – some of them former Commonwealth drafters.

Commencing on 2 June 1975, the Institute's first course was open only to qualified lawyers nominated by governments in Australia and Papua New Guinea. Dogged by problems with accommodation, working conditions and study facilities, Sexton reported that the 10 students remained keen, enthusiastic and industrious throughout. After this course, which was fully subscribed, no further Australian participants attended. Because of ongoing difficulties with accommodation and insufficient nominees the training

program planned for 1976 was cancelled and invitations to nominate students were extended to developing countries. With additional support from the Australian Development Assistance Bureau (ADAB) the Institute subsequently provided training in drafting to lawyers from numerous Commonwealth countries including Bangladesh, Burma, East Africa, Ghana, India, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Mauritius, Nepal, Nigeria, Pakistan, Papua New Guinea, Sierra Leone, Singapore, Sri Lanka, Swaziland, Tanzania, The Gambia and Western Samoa. At the end of the decade the Institute moved to Block C of Acton House in Edinburgh Avenue.

From the beginning it was difficult for OPC drafters to be as enthusiastic as the Attorney-General expected them to be about his pet project. Following the seminar in London in March 1974, Bronte Quayle expressed some reservations about whether it was possible to train concurrently Australian drafters and those from developing countries – operating under a different system of law, where English was not their first language. Quayle also, presciently, raised the issue of whether overseas students would actually return home to drafting jobs or whether they would instead be elevated to other areas of law based on their training in Australia. Without consulting with First Parliamentary Counsel Charles Comans, Murphy approached Noel Sexton directly to offer him the job as Director of the Legislative Drafting Institute. Comans had advised the Attorney-General at least twice previously that he was relying on the return of Sexton from secondment to the Legislative Drafting Division to supplement his diminished contingent of senior drafters, as both a drafting and a training resource. He suggested that Dennis Pearce – an experienced drafter and teacher, and possessing 'considerable ability with an energetic approach' – should be asked to consider the Director's role.

Protests to the Attorney-General about the loss of Sexton to the Institute were to no avail, as were later attempts to bring the Institute into a closer relationship with OPC and to rationalise administrative resources. Proving to be very resource-intensive from a drafting perspective, the Institute required the equivalent of up to three experienced drafters to train 10 students, without the added benefit of having either party produce Bills at the same time. It was never feasible for the Institute to undertake research or to embark on a program of fostering interest in legislative drafting as planned, and it proved impracticable for student projects to generate any actual draft legislation.

Neither was the Legislative Drafting Institute effective as a provider of skilled drafters for either the Office of Parliamentary Counsel or the Legislative Drafting Division. Apparently due to a misunderstanding, OPC was excluded from participating, even as an observer, in the selection of the first group of students. Noel Sexton and Ted Tudor (after Cyclone Tracy working back in Canberra in the Legislative Drafting Division) interviewed numerous applicants, and places were offered without OPC being involved. The Office was further disenfranchised at the stage when students were being

considered for appointment to drafting positions. Nearing the end of the first course, Charles Comans, stating that OPC had two places to offer to suitable graduates, asked Sexton to provide him with an assessment of the trainees' aptitude for drafting and invited him to arrange familiarisation visits to the Office for interested students. Declining the invitation for visits Sexton replied that he was unwilling to provide preliminary assessments at that time, but told Comans that all eight students nominated by Australian governments had made it very clear that they wanted jobs in OPC and were disappointed that 'no firm indication of employment' by OPC had yet been given. Despite a detailed explanation from Comans about the limited scope for engagement of 'young and inexperienced persons' and the need for OPC to effectively assess applicants, Sexton would not change his approach. Instead, shortly before the course was due to conclude on 12 December 1975, he asked Comans if he would like to set a practical test for the students. Noting the late stage in proceedings, Comans responded that he would prefer to test those who applied to OPC and would wait on the course assessment, which Sexton subsequently supplied to the Attorney-General's Department.

Revitalising Resources

Two of the top students from the inaugural Legislative Drafting Institute course, Sue Bromley and Mark Derham, were appointed to OPC at the end of 1975. Several others went to the Legislative Drafting Division. By 1980 only one of these graduates was still drafting, in the Attorney-General's Department. Combining its graduate recruitment efforts with the Department, OPC had considerably more success in retaining recruits from a cadetship scheme, aiming to attract 'really bright young people' before they became established in private practice.

L-R: Legislative Drafting Institute graduate Mark Derham and FPC Bronte Quayle at the OPC Christmas picnic in 1977. [OPC photograph]

Selected law graduates, described by Comans as 'outstanding young lawyers', were employed while undertaking studies to qualify for admission to practice. Targeted to the needs of public service employers, a Legal Workshop introduced at the Australian National University in 1971 offered an alternative to taking articles as a means of entering the profession.

Soon after joining OPC under the Legal Workshop scheme, Adrian van Wierst was admitted as a Barrister of the Supreme Court of New South Wales. Sydney 1973. [Photograph courtesy of Adrian van Wierst]

First to be recruited to OPC under the Legal Workshop arrangement was Adrian van Wierst, in 1973. His interest piqued by a session presented by Geoff Kolts, he requested a placement in drafting at the end of the Workshop. Several senior drafters were approaching retirement around this period, making it critical for OPC to recruit new legal staff in time for them to benefit from on-the-job training imparted by experienced mentors. Between 1977 and 1982 seven graduates were placed in OPC under the Legal Workshop scheme, with van Wierst frequently doing duty as the Office representative on selection panels. Hilary Penfold was recruited in 1977, followed by Vince Robinson (1978), Sandra Power (1979), Keith Byles (1980), Philippa Horner and Vivienne Bath (1981) and Paul Lanspeary (1982).

At the beginning of 1980, when the Public Service Board called for 'a more effective contribution' from the Legislative Drafting Institute in recruiting Australian drafters, Attorney-General Peter Durack raised the question of whether the Institute was needed at all. Advocating a low-key approach to abolition in the light of difficulties meeting drafting requirements of private members at that time, Acting FPC Geoff Kolts advised the Attorney-General that he thought 'it should be made clear to the Board that the Legislative Drafting Institute, whatever role it may have in Australia's foreign aid program, [could] not play, and [was] not needed to play any part in the recruitment and training plans of [the] Office'.

Recruited as a graduate, Hilary Penfold started drafting in July 1977 after completing Legal Workshop at the Australian National University. Administrative Building 1980. [OPC Photograph]

On 30 April 1981 a committee reviewing Commonwealth government functions and public service staffing levels recommended wide-ranging changes to public sector organisations and cuts to expenditure. Among these was the abolition of the Legislative Drafting Institute. Announcement of the decision included a statement that any future training for legislative draftsmen from overseas countries would be carried out as 'on the job' training in the Office of Parliamentary Counsel and within the Legislative Drafting Division. Drafting work on the usual legislative program needed to be deferred while OPC prepared an omnibus Bill giving effect to review recommendations – a complex task involving coordination of instructions from numerous agencies. The repeal of the *Legislative Drafting Institute Act 1974* was provided for under Part XVI of the *Commonwealth Functions (Statutes Review) Act 1981*. This part was proclaimed to come into operation on 9 December 1981, on which date the Institute was formally abolished.

Long-term personal secretary to First Parliamentary Counsel, Sylvia Sheldon. Administrative Building 1980. [OPC photograph]

Sue Bromley, one of the graduates of the Legislative Drafting Institute, was the only female drafter in OPC when she arrived after the course ended in December 1975. To that stage, very few women had worked as Commonwealth parliamentary drafters, some for very short periods. The first female drafters, Betty Moffatt and Marie Kinsella, had been employed in the Parliamentary Drafting Division early in the 1950s. A Stow Prize winner from the University of Adelaide, with a post-graduate qualification from the University of Cambridge in England, Betty Moffatt was appointed in September 1952, but lost her public service position when she married then Deputy Registrar of Trade Marks, Tom Ashton, in 1954.[13] One of the first women admitted to the New South Wales Bar, and a founding member of the Women Lawyers' Association, Marie Kinsella was similarly deemed to have resigned when she married fellow drafter Noel Sexton in 1955.[14] In the Parliamentary Drafting Division from 1964 until 1969, Mary Lynch also married a colleague, John McKenzie. Their marriage took place after the removal of the marriage bar in November 1966, so she was able to continue working. Cynthia Cheney (née Heairfield) continued drafting after her marriage in 1969, but resigned from the public service in September 1972, before the introduction of equal pay for women. She started drafting in 1967 – after working as a Judge's associate in the Supreme Court of South Australia with both John McKenzie and Dennis Pearce – and left the Division in mid-1970. The sole female drafter in OPC on its creation in June 1970, Jean Cunningham (later Pullen and Baker), moved to the Legislative Drafting Division in the Attorney-General's Department in 1973, becoming head of the Office of

[13] While Betty Moffatt was deemed to have resigned from the Public Service with effect from 29 December 1953, the name 'Mrs Ashton' was included in Parliamentary Drafting Division circulation lists in mid-1954, suggesting that she may have continued drafting in some other capacity for a period after her marriage.
[14] The Sextons commuted for a short time after their marriage while Marie went back to Sydney to work. She left the workforce to have their three children, returning to paid employment in 1969. She first negotiated an innovative family-friendly working arrangement with the Public Service Board, then moved to the Attorney-General's Department on the same basis, retiring from there in 1980.

Legislative Drafting from its formation in 1990. Hilary Penfold started drafting in 1977, coinciding briefly with the end of Sue Bromley's tenure. She was then the only woman drafting in the Office until Sandra Power arrived in 1979.

Drafter Denis O'Brien in his office in the Administrative Building. Late in 1980 Adrian van Wierst took numerous staff photographs in order to compile a farewell photo album for Bronte Quayle, who retired as FPC in January 1981. [OPC photograph]

Administrative Review

As always, reform in wide-ranging areas of government administration was reflected in legislation drafted in the 1970s. The first national health insurance scheme, Medibank, was established by the Health Insurance Commission Act passed at the joint sitting in August 1974 and implemented from 1 July 1975. Altered within a year, and spawning Medibank Private which began operating in October 1976, the original scheme (albeit with different funding arrangements) was virtually reinstated as Medicare by passage of the *Health Legislation Amendment Act 1983*. Following a Royal Commission on Intelligence and Security, the *Australian Security Intelligence Organization Act 1979*, setting out ASIO's functions and regulating its activities, was passed and commenced in 1980. After the Henderson Committee of Inquiry into poverty in 1973 found 10 per cent

of Australian households living below the poverty line, social security legislation was enhanced with a series of Social Services Bills drafted throughout the decade.

Generally, from the time it came into office the Fraser government concentrated on attacking the budget deficit and minimising government spending, adopting a program of stringent fiscal rectitude and constant review of public sector administration. Appointed immediately after the election at the end of 1975, the Administrative Review Committee chaired by Sir Henry Bland (former secretary of the Department of Defence and of Labour and National Service) reviewed government spending, priorities and structures. All Ministers were asked to identify savings and programs which might be terminated. Staff and expenditure cuts were severe and ongoing. Among the many millions of dollars slashed from the budget from January 1976 onwards were savings from the closure of the Hotel Kurrajong, a favourite Canberra residence for many parliamentarians since the first sittings in the new capital in 1927.

In August 1976 the Royal Commission on Australian Government Administration, chaired by Dr Herbert ('Nugget') Coombs, reported on a review instigated by the Whitlam Government in June 1974 to inquire into the Australian Public Service, statutory corporations and other Australian Government authorities. Recommendations adopted by the new Fraser Government included changes to public service employment. The 10 per cent limit on non-specialist graduate recruitment was abolished, and promotion by merit and preference for ex-servicemen reaffirmed. Regular efficiency audits were introduced and the approach to the creation and direction of statutory authorities tightened. The number of public sector staff associations was decreased, and legislation relating to the redeployment and retirement of Commonwealth employees created considerable industrial unrest late in the decade. Retrenchment of public servants, requirements for Permanent Heads to ensure the effective and economical use of staff, and the dismissal or suspension without pay of staff involved in industrial action were facilitated by the *Commonwealth Employees (Employment Provisions) Act 1977* and the *Commonwealth Employees (Redeployment and Retirement) Act 1979*. Both Acts had comparatively short life spans, being repealed in 1983 and 1986 respectively, following a further change of government.

Meanwhile, on 6 November 1980 Prime Minister Fraser announced a 'Review of the Functions of Government and of Public Service Staffing Levels' to be carried out by senior Ministers. Chaired by former Treasurer Sir Phillip Lynch, and colloquially referred to as 'the razor gang', this review was tasked with continuing the government's agenda of eliminating waste, duplication and unnecessary costs. The review's outcomes included a further reduction of public service staff and the transfer of various Commonwealth functions to the States or the private sector. Contemporary royal commissions into the meat industry and the Federated Ship Painters and Dockers' Union (the Costigan Commission), and a Joint Committee of Public Accounts inquiry

into medical benefits payments, uncovered serious problems in public administration. Widely publicised, these prompted yet another examination of the federal bureaucracy. Establishment of the broad-ranging Review of Commonwealth Administration was announced in September 1982. Its report was presented only weeks before the government fell in March 1983.

Decreasing the volume of legislation coming before the Parliament was one objective targeted as a manifestation of 'lesser government'. On 7 September 1976 – the Prime Minister having obtained comparative information on legislatures in the United Kingdom and Canada – Charles Comans was asked to prepare a paper with suggestions for reducing the number of Bills to one-third of their current level. Considering his recommendations one month later, the Legislation Committee of Cabinet adopted several, acknowledging that while the changes were important they were unlikely to result in any dramatic reduction in legislation. While Australia was dealing with comparatively more Bills, it had to meet constitutional requirements for separate taxing Bills and customs and excise duties which did not apply in other Commonwealth countries. In early 1977 Geoff Kolts participated in an inter-departmental committee with the Department of Prime Minister and Cabinet, the Attorney-General's Department and the Department of Finance further examining the issue.

Over the life of the government, various approaches were developed and strengthened in a continuing effort to reduce the volume of legislation. Measures adopted included limiting initiatives requiring Bills to exclude those where government objectives could be met by administrative means or under existing law; stockpiling lesser priority proposals; lessening the extent to which government activity was supported by legislation; enacting Standing Acts for matters otherwise requiring frequent legislative attention; and whenever possible combining related matters into one Bill rather than presenting them in separate Bills. Following a further direction from Cabinet to report on methods for reducing the volume of legislation, an annual Statute Law Revision (Miscellaneous Amendments) Bill[15] was introduced in 1981 to combine various technical and non-contentious amendments to Acts. More stringent planning practices were also introduced, with the legislation program determined in advance of each sittings. Additional parliamentary legislation committees were established to examine proposed legislation. Stricter prioritising was used to control the number of legislative proposals brought forward, and there was more systematic development of short and long-term legislation programs.

[15] From 1983 called the Statute Law (Miscellaneous Provisions) Bill.

The Wombat Incident

An unfortunate wombat played a central role in a memorable trip for a drafter and some colleagues from the Department of Business and Consumer Affairs (BACA) in 1977. Born of major machinery of government changes which saw ten departments abolished, seven new ones created and six re-titled, BACA existed from 22 December 1975 until 7 May 1982. Set up to maintain close links with consumers and the business community, the Department had a practical regulatory role with responsibility for customs and excise functions, trade practices, industries assistance and consumer affairs. OPC worked with instructors from BACA on legislation across all these areas. One expedition with two colleagues from BACA was to become part of OPC folklore:

> *OPC drafter, Adrian van Wierst, had an eventful journey from Perth to Canberra, travelling with Tony Hartnell (Deputy Secretary) and Ray Shoer of the Department of Business and Consumer Affairs. The three had been attending a conference in Perth. By the time the conference ended, an airline strike prevented the return trip by air. The trio left Perth on Sunday afternoon in a rental car, intending to drive back to Canberra. At about midnight, on the Nullarbor Plain, the car struck a wombat and was rendered useless with a severely damaged radiator. At about 1 am, Hartnell hitched a lift to the Nullarbor road-station (petrol, phone and cafe) and returned at about 4 am driving a tow-truck – accompanied by the too-drunk-to-drive tow-truck operator. Hartnell phoned a customs officer at Ceduna and asked him to pick up the trio. From Ceduna, they travelled in a chartered light plane to Adelaide. From there they drove to Canberra in a borrowed car belonging to an employee in the Department of Business and Consumer Affairs. They arrived in Canberra on Thursday – a few hours before the first flight from Perth, the strike having by then ended. Adrian van Wierst went straight into a meeting on stevedoring reform legislation with instructor Adrian Fogarty, who had flown in from Melbourne only to be told that his allocated drafter was stranded in the middle of the Nullarbor Plain following a mishap with a wombat.*

BACA Deputy Secretary Tony Hartnell, stranded on the Nullarbor Plain after the 'wombat incident' in 1977. [OPC photograph]

1970s Law Reform

Attempts to reform companies law continued to create difficulties for governments on both sides of politics. A Corporations and Securities Industry Bill and a National Companies Bill prepared for the Whitlam government, which wanted the Commonwealth to assume national regulation of all companies and the securities industry, were not enacted. Instead, State non-Labor governments formed the Interstate Corporate Affairs Commission which operated from 1 July 1974 to provide uniform companies and securities administration in those states under the supervision of the Ministerial Council of State Attorneys-General. In 1976 the coalition government proposed a cooperative scheme under which it would, empowered by section 122 of the Constitution, pass companies and securities legislation for the Australian Capital Territory and each State would legislate to apply it as law. The scheme was not unlike the model draft company statute suggested by Sir Robert Garran in 1927 and circulated by Attorney-General John Latham without notable success in the 1930s. A system of national administration without centralised control was formally agreed on 22 December 1978. This involved uniform and complementary Commonwealth and State companies and securities legislation, with new companies still formed under the law of one of the participants. Corporate affairs administration was authorised by delegation from a new body created under the *National Companies and Securities Commission Act 1979*. The Northern Territory became a participant in the scheme from 1 July 1986. Further legislation drafted in this area included the *Companies Act 1981* and the *Companies (Acquisition of Shares) Act 1980*.

Radical changes to the judicial system were drafted and legislated in the 1970s. Two new federal courts replaced the traditional arrangement whereby a small central judiciary was supplemented by state courts, vested by the Parliament with jurisdiction over federal matters. In December 1971 the Senate Standing Committee on Legal and Constitutional Affairs began a review of 'the law and administration of divorce, custody and family matters with particular regard to oppressive costs, delays, indignities and other injustices'. A Family Law Bill introduced in 1973, and twice more after that, engendered long debate particularly in the House of Representatives over the proposal that 12 months' separation should be the only ground for divorce. Markedly more progressive than the ground-breaking *Matrimonial Causes Act 1959* the Bill was eventually passed after a conscience vote on 21 May 1975. The *Family Law Act 1975*, which commenced on 5 January 1976, also established the Family Court of Australia.

Inserted into the Bill late in 1974, the proposal for a separate family court was developed in response to difficulties the government was experiencing in passing legislation for a superior court. A Superior Court of Australia Bill introduced in the Senate in December 1973 proposed the establishment of a broadly based federal court,

one division of which was to deal with family law. Defeated by a margin of two votes in the Senate in April 1974, and reintroduced after the premature election in May that year, the Bill was again defeated, by a tied vote, in February 1975. Introduced by the new coalition government, the more narrowly focused *Federal Court of Australia Act 1976* commenced on 9 December 1976. Given broad original jurisdiction covering most civil matters arising under Australian federal law and some appellate authority, the Federal Court took over the work of the Australian Industrial Court and the Federal Court of Bankruptcy from 1 February 1977. In 1980 the High Court, which since 1903 had various courtroom and registry facilities in both Sydney and Melbourne, moved to new permanent premises in Canberra.

Administrative law reforms in the 1970s included the drafting of the *Administrative Appeals Tribunal Act 1975*. Establishing the Administrative Appeals Tribunal (AAT) as an independent review mechanism for a wide range of administrative decisions, the Act also created the Administrative Review Council (ARC). The ARC was set up to monitor and provide advice to the Government on complementary review functions, performed by various bodies in the Commonwealth administrative review system. First Parliamentary Counsel was a member of the ARC from its inception in late 1976 until the end of 1982. The *Ombudsman Act 1976*, which commenced by proclamation on 1 July 1977, provided for the appointment of an Ombudsman to investigate administrative actions by Commonwealth departments and authorities. Professor Jack Richardson was the first Commonwealth Ombudsman. He was followed in succession by two former drafters, Geoff Kolts and Professor Dennis Pearce.

Laws facilitating judicial review by the Federal Court of Australia of some exercises of Commonwealth power were embodied in the *Administrative Decisions (Judicial Review) Act 1977,* which came into effect in October 1980. Cooperative arrangements for the provision of legal aid by independent commissions, to be established under State and Territory legislation, were enabled by the passage of the *Commonwealth Legal Aid Commission Act 1977*. These arrangements replaced and expanded on the work previously done by the Australian Legal Aid Office, which had been set up as an administrative body within the Attorney-General's Department in 1973. The Legal Aid Commission was replaced by the Commonwealth Legal Aid Council under an amending Act in 1981.

Tax Law Reforms

Developments in taxation law created unremitting work for drafters. Comprehensive knowledge of a growing body of law and greater drafting specialisation were required to handle increasingly complex forms of taxation. The basic taxation system – embodied in the *Income Tax Assessment Act 1936*, the Pay-As-You-Earn (PAYE) legislation of 1944,

and numerous other early laws – was subjected to ongoing review throughout the 1950s, and a great many reforms made in subsequent decades.

Most demanding of the skills of policymakers in the Australian Taxation Office and the drafters were measures to deal with an unprecedented level of sophisticated tax evasion from early in the 1970s. Traditional general anti-avoidance provisions, even with stronger amendments made in the late 1960s, were ineffective in combating numerous 'tax saving' schemes. Involving multiple and complicated transactions, and many thousands of taxpayers, the schemes threatened both the collection of revenue and the integrity and equity of the tax system. Frequently requiring urgent drafting, and anticipatory analysis of likely evolutions of the evasion strategies, remedial provisions had to overcome the additional challenge of 'judicial literalism' which, especially in the early 1970s, resulted in court decisions tending to favour tax avoiders.[16]

Used to describe a large proportion of the schemes, 'bottom of the harbour' tax evasion involved stripping companies of assets and then selling them a number of times to make them difficult to trace – leaving the Australian Taxation Office, and other unsecured creditors of companies insolvent as a result of such schemes, with nothing. In gestation from mid-1978, the *Crimes (Taxation Offences) Act 1980* stopped such schemes, making pre-tax profit stripping a criminal offence, and imposing personal liability on people who benefited from the strategy whether or not they were currently involved. Attracting some strong criticism during a period of public comment after its introduction, the Crimes (Taxation Offences) Bill was ultimately passed in a rush on 4 December 1980 and received assent on the same day. The Act gained greater credence when disclosures made in the Costigan Commission report, tabled in Parliament in August 1982, linked organised crime in Australia with the wave of tax evasion. Related legislation included the *Taxation (Unpaid Company Tax) Assessment Act 1982*. Retrospective in its operation, this legislation enabled the government to recover taxes owed by the promoters and users of tax avoidance schemes.

Other major changes to taxation in the 1980s included the abolition of personal income tax indexation under the *Income Tax (Assessment and Rates) Amendment Act 1981*; the imposition of the Medicare Levy in 1983; and the introduction of capital gains and fringe benefits tax in 1986. A package of tax reforms in 1985-1986 left OPC hard-pressed to meet the requirements of the legislative program. First Parliamentary Counsel reported that the extent and difficulty of the work carried out was much greater than might be inferred simply by reference to the number of Acts passed (202) during the year.

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[16] Boucher, Trevor *Blatant, artificial and contrived: Tax schemes of the 70s and 80s* Australian Taxation Office Canberra June 2010

Practising his guitar-playing in the roof-top tank room of the Administrative Building during a lunch break, Adrian van Wierst was renowned for the variety of his leisure activities. During his 32-year career at OPC, other diversions from drafting included balloon modelling, billiards, genealogy, hang-gliding, juggling (balls, knives and fireballs), knot making, mastering languages (including Dutch and Spanish), photography, scuba diving, sewing, unicycling, wind surfing, wood turning and travel to exotic places. Administrative Building 1977. [OPC photograph]

Jeremy Wainwright and Steve Reynolds sailed across Lake Burley Griffin to the 1977 OPC Christmas picnic in a Mirror-class dinghy. Built by Jeremy, the craft was more commonly used for weekend sailing by the two drafters. [OPC photograph]

Geoff Harders and Rod Dunn, preparing the oysters for an OPC picnic. Robert Garran Offices 1985. [OPC photograph]

Expanding Horizons

Bronte Quayle retired on 30 January 1981. Geoff Kolts succeeded him as First Parliamentary Counsel. Jim Monro also retired in January 1981, so two Second Parliamentary Counsel, Ron King and Ian Turnbull, were appointed on 6 and 31 January 1981 respectively. When King retired a year later, Geoff Harders was appointed Second Parliamentary Counsel from 29 January 1982. With the Review of Commonwealth Functions being implemented, Kolts inherited negotiations over shrinking staff ceilings and stringent finances in addition to the perennial problem of recruiting sufficient drafters to do the work. In March 1981 OPC had a full-time operative staff of 33.

Staffing and recruitment both eased in the middle of the decade, although resources were still stretched to cope with the growing workload. OPC's staff numbers rose from 34 in June 1983 to 40 the following year, then dropped to 38 by June 1985. By then five of the 18 full-time legal professional staff were women. In addition to the First Parliamentary Counsel, two Second Parliamentary Counsel and other drafters, there were 10 clerical assistants and 10 full-time stenographic staff. One position was assigned as 'Officer in Charge of Printing Bills'. Part-time resources were used to cope with the workload – including employment of retired senior drafters as consultants to deal with large or specialised projects, a practice continued in later years. Annual Reports recorded 'little difficulty in recruiting suitable professional staff' and the success of a new recruitment approach in conjunction with the Attorney-General's Department. Sponsorship of final year law graduates to attend the Australian National University Legal Workshop had proved successful in attracting drafters. Although several senior officers retired around that time, the 'much younger staff' who had taken their places were described as displaying the ability to learn quickly, enabling the Office to meet the heavy demands placed on it.

Overseas visits for First Parliamentary Counsel and involvement in international forums became more common. Senior drafters attended drafting-related meetings and conferences and held discussions with counterparts, most frequently with those in London and Ottawa. An idea to hold regular conferences specifically for legislative drafters had its genesis at the meeting of Commonwealth Law Ministers in London in 1973. The objective was to promote professional cooperation among drafters, and to assist in training legislative drafters in less developed Commonwealth countries. Supported by John Ewens through his consultancy for the Commonwealth Secretariat, and subsequently nurtured by Bronte Quayle during his terms as Second and First Parliamentary Counsel, the formation of an association of drafters working in Commonwealth countries was most actively pursued by Geoff Kolts.

Sandra Power joined OPC in 1979, after being interviewed by Geoff Kolts and Hilary Penfold in the bar of the Hilton Hotel in Sydney. She attended the inaugural meeting of the Commonwealth Association of Legislative Counsel (CALC) in Hong Kong in 1983, on her way home from a drafting exchange to Canada, and was elected as the Association's first secretary. Administrative Building 1980. [OPC photograph]

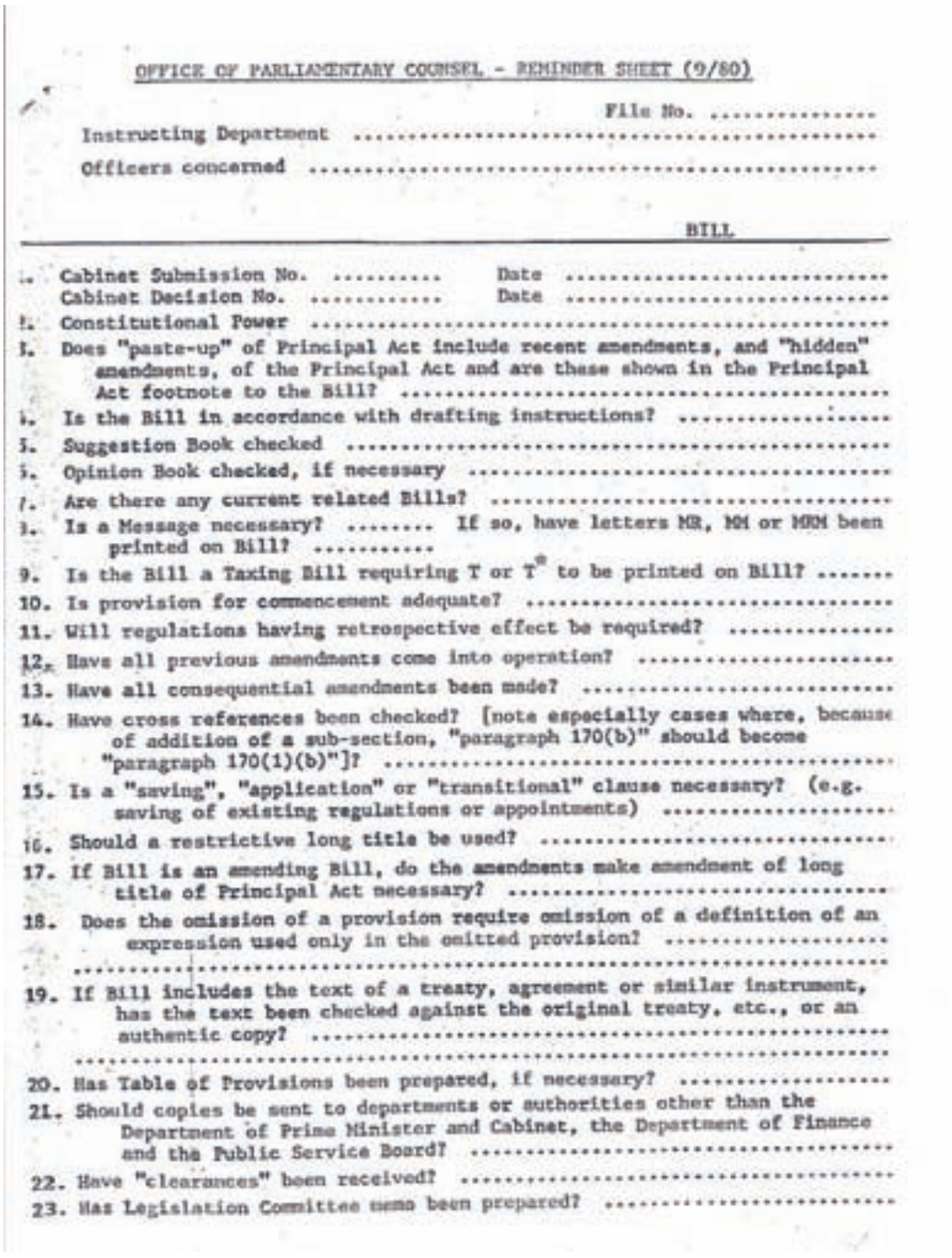
While Second Parliamentary Counsel, in 1977 Kolts wrote to the Commonwealth Secretariat suggesting the establishment of a Commonwealth association of Parliamentary Counsel. In 1978 he unsuccessfully sought the assistance of the Statute Law Society to run a conference for drafters. After some further correspondence, in October 1982 the Commonwealth Secretariat indicated to Kolts (then First Parliamentary Counsel) that the time 'might be opportune' to establish a professional association of drafters and sought Australia's support in providing administrative support for such an organisation. Obtaining the Australian Attorney-General's agreement, Kolts proposed the methodology which was subsequently adopted to achieve this goal. He initiated the process by writing to Parliamentary Counsel in Australia and overseas, proposing the formation of an association; coordinated the revision of and consultation on a draft constitution; and negotiated an appropriate title for the organisation.

Participants at a meeting of Commonwealth Law Ministers held in Sri Lanka in February 1983 endorsed establishment of the association, and accepted an offer from Australia for the Office of Parliamentary Counsel to provide its secretariat, to 'act as a central point for supplying information on legislation, drafting techniques and practices and other relevant matters'. The Commonwealth Association of Legislative Counsel (CALC) was formed on 21 September 1983 during the 7th Commonwealth Law Conference held in Hong Kong. Notably absent was Geoff Kolts, who was prevented by his duties as FPC from attending the meeting. He was represented by Second Parliamentary Counsel Ian Turnbull. After lively debate, the constitution developed by Kolts was adopted, with some vital amendments to resolve a political deadlock.[17] OPC drafter Sandra Power was elected as secretary. She resigned when she transferred to the Attorney-General's

[17] Ian Turnbull, oral history.

Department in late 1984, and Kolts himself acted as secretary to CALC until September 1986 when the secretariat was transferred to Canada. All current and former legislative drafters in Commonwealth countries were eligible to become members of CALC. Papers on matters of interest to legislative counsel were presented and discussed at meetings, and also published in CALC newsletters and the CALC journal, *The Loophole*.

L-R: Denis O'Brien, Geoff Harders, Cleo Kosmas, Ron King, Ian Turnbull, Jim Monro and Lyn Gruber. Administrative Building 1980. [OPC photograph]



OFFICE OF PARLIAMENTARY COUNSEL - REMINDER SHEET (9/80)

File No. .....

Instructing Department .....

Officers concerned .....

BILL

Cabinet Submission No. ..... Date .....
Cabinet Decision No. ..... Date .....

Constitutional Power .....

1. Does "paste-up" of Principal Act include recent amendments, and "hidden" amendments, of the Principal Act and are these shown in the Principal Act footnote to the Bill? .....
2. Is the Bill in accordance with drafting instructions? .....
3. Suggestion Book checked .....
4. Opinion Book checked, if necessary .....
5. Are there any current related Bills? .....
6. Is a Message necessary? ..... If so, have letters MR, MM or MMM been printed on Bill? .....
9. Is the Bill a Taxing Bill requiring T or T* to be printed on Bill? .....
10. Is provision for commencement adequate? .....
11. Will regulations having retrospective effect be required? .....
12. Have all previous amendments come into operation? .....
13. Have all consequential amendments been made? .....
14. Have cross references been checked? [note especially cases where, because of addition of a sub-section, "paragraph 170(b)" should become "paragraph 170(1)(b)"]? .....
15. Is a "saving", "application" or "transitional" clause necessary? (e.g. saving of existing regulations or appointments) .....
16. Should a restrictive long title be used? .....
17. If Bill is an amending Bill, do the amendments make amendment of long title of Principal Act necessary? .....
18. Does the omission of a provision require omission of a definition of an expression used only in the omitted provision? .....
19. If Bill includes the text of a treaty, agreement or similar instrument, has the text been checked against the original treaty, etc., or an authentic copy? .....
20. Has Table of Provisions been prepared, if necessary? .....
21. Should copies be sent to departments or authorities other than the Department of Prime Minister and Cabinet, the Department of Finance and the Public Service Board? .....
22. Have "clearances" been received? .....
23. Has Legislation Committee memo been prepared? .....

A manual check list for the Bills process, developed before the introduction of computers in OPC.

Developmental opportunities for drafters included increasing collaboration with other organisations in Australia and overseas. Secondments and exchanges were arranged from early in the 1980s. As well as at the Australian Law Reform Commission, OPC officers worked in places such as BP Australia in Melbourne; the Royal Commission on Australia's Security and Intelligence Agencies; and the Special Projects Division of the Attorney-General's Department. From May 1993, James Graham worked for one year as a drafter for the Zambian government. Peter Ilyk was temporarily transferred to be Official Secretary and Deputy Administrator of Norfolk Island from March 1985 to July 1987. In 1982-1983 the first overseas exchange was arranged between OPC's Sandra Power and Don Maurais from the Department of Justice in Ottawa. Steve Reynolds spent twelve months during 1986 and 1987 in the Canadian Department of Justice on a drafting exchange with Peter Wershof. Richard Sarvaas was placed in the Law Commission in London for a year from August 1987, while Catherine Johnson from the United Kingdom Office of the Parliamentary Counsel worked in OPC for ten months, and at the ALRC for two. Leave, and sometimes sponsorship, was also granted to drafters to take up scholarships and post-graduate study opportunities overseas.

Don Maurais, the first drafter on exchange from Canada. He worked in OPC for twelve months, from August 1982. Returning to the Department of Justice of Canada, he rose to become Deputy Chief Legislative Counsel in 1995, heading the Legislation Section responsible for the drafting of all of the Canadian government's primary legislation. Don retired from the public service on 30 December 2003, and died suddenly on 19 April 2004. [OPC photograph]

Steve Reynolds putting in the leg work before his Canadian exchange in 1986-1987. Administrative Building 1980. [OPC photograph]

Drafter Richard Sarvaas – before the 1988 ban on smoking in public service offices. Administrative building 1980. [OPC photograph]

L-R: Canadian exchange drafter, Peter Wershof, with First Assistant Parliamentary Counsel John Leahy. Robert Garran Offices 1987. [OPC photograph]

In May 1983 OPC moved with the Attorney-General's Department from the Administrative Building to new accommodation in the Robert Garran Offices. Purpose built for the Department, the new offices – attached to the heritage-protected building which had originally housed both the Patent Office and the ACT Supreme Court – had been under construction since December 1980. Negotiations about the accommodation to be provided had begun more than six years before that, Charles Comans successfully arguing that the importance and confidential nature of drafting work necessitated the provision of separate offices for all drafters. Asked in 1974 to provide an estimate of staff growth over the following 25 years, OPC noted the likely future need for space for computer equipment, and suggested that two work spaces be allowed for computer operators. Timed to occur after the end of the Autumn Sittings, the move caused little disruption to most drafting work, although Hilary Penfold recalled frantically trying to finish drafting a Sex Discrimination Bill while all her colleagues were in moving mode. OPC was accommodated in a

Musa Gide Dandagoro, a visiting drafter from Nigeria, worked in OPC between January and June 1989. Robert Garran Offices 1989. [OPC photograph]

self-contained corner in the North Building with a separate entrance on Macquarie Street, and locked doors between the Office and the Department. Dubbed 'the Southern Ballroom' by its occupants, the area had very high ceilings and lots of empty space in the middle.

OPC staff in 1983, following the move to new accommodation at Robert Garran Offices. [OPC photograph]

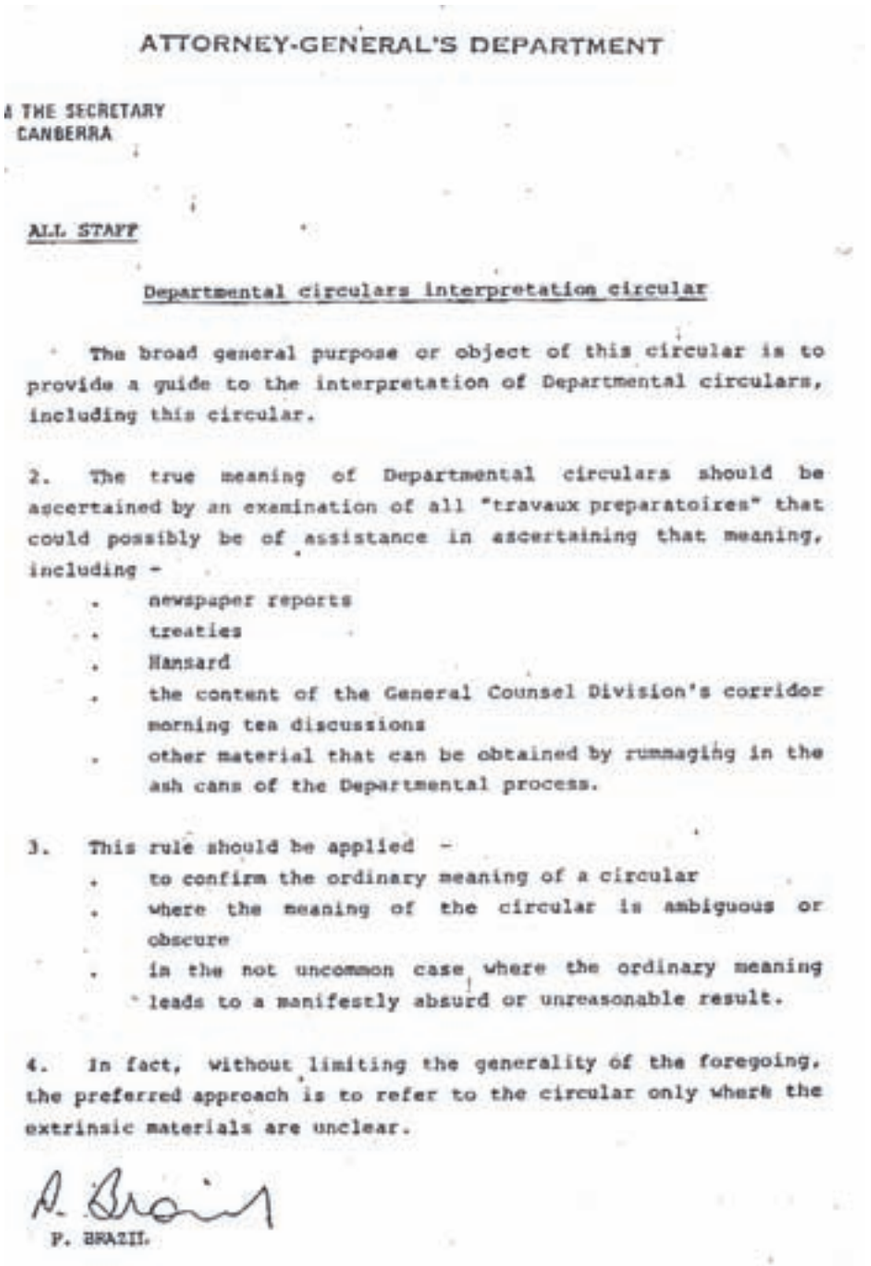
Extrinsic Material

Explanatory memoranda accompanying Bills became more common in the second half of the twentieth century. Early memoranda were more likely to be prepared for especially complex Bills. These were often presented in comparative format – identifying additions or deletions which would be made to a principal Act if the amending Bill was passed; or in some instances comparing clauses of existing state legislation with the proposed provisions of new uniform Commonwealth law. Companion documents designed to assist parliamentarians, officials and the public to understand the objectives and application of the clauses of a Bill gradually became more common. Their provision was the responsibility of the instructing department, which would need to work in close collaboration with drafters in the course of developing a Bill. The 1980 edition of the *Legislation Handbook* produced by the Department of Prime Minister and Cabinet specified that memoranda should be provided for all Bills that required explanation, and set out guidelines for what was required in the accompanying document. The format developed was for an introductory outline of the purpose of the Bill, or group of related

Bills, and notes explaining the intention of each clause. Arrangements for the printing, publication and sale of memoranda were made in similar fashion to those for the relevant Bill.

From 1982 it was the practice for an explanatory memorandum to accompany every government Bill introduced into the Parliament. Codifying this practice, the *Legislation Handbook* of 1983 specified for the first time that supplementary explanatory material should also be prepared for all but brief and straightforward amendments. Practice adopted from 1986 saw the formal tabling of explanatory memoranda at the end of the second reading speech introducing a Bill. There were some later variations to the timing of tabling. In 1994 the presentation of explanatory memoranda, signed by the Minister presenting the Bill, became a requirement of the House of Representatives Standing Orders. Agencies responsible for administering the relevant legislation had been expected to supply 'explanatory statements' describing the purpose of regulations to the Senate Regulations and Ordinances Committee since its formation in 1932.

Increasing use of separate documents to clarify the legislative intent of Bills stimulated widespread debate on the question of material which should be available to courts to assist them in the interpretation of legislation. Drafters participated in an in-house conference on the topic organised by the Attorney-General's Department in March 1981, and some delivered related sessions at courses conducted by the Public Service Board. One outcome was a discussion paper on extrinsic aids to statutory interpretation, prepared by First Parliamentary Counsel Geoff Kolts and Deputy Secretary Pat Brazil following an overseas study tour in mid-1981. The paper and the proceedings of a subsequent public symposium, held in Canberra in February 1983, were tabled in Parliament. Resultant amendments made to the *Acts Interpretation Act 1901* clarified the use of materials which did not themselves form part of an Act. Section 15AA, inserted in 1981 directed courts to give preference to interpretations promoting the object or purpose of an Act. Section 15AB, added in 1984, included an amendment that consideration might be given to explanatory memorandum and second reading speeches when endeavouring to interpret the provisions of an Act. The changes were not accepted readily in all quarters, but as courts proved gradually more willing to adopt a purposive approach to interpretation closer attention was paid to the preparation of extrinsic material with this situation in mind.



ATTORNEY-GENERAL'S DEPARTMENT

A THE SECRETARY
CANBERRA

ALL STAFF

Departmental circulars interpretation circular

The broad general purpose or object of this circular is to provide a guide to the interpretation of Departmental circulars, including this circular.

2. The true meaning of Departmental circulars should be ascertained by an examination of all "travaux preparatoires" that could possibly be of assistance in ascertaining that meaning, including -

- newspaper reports
- treaties
- Hansard
- the content of the General Counsel Division's corridor morning tea discussions
- other material that can be obtained by rummaging in the ash cans of the Departmental process.

3. This rule should be applied -

- to confirm the ordinary meaning of a circular
- where the meaning of the circular is ambiguous or obscure
- in the not uncommon case where the ordinary meaning leads to a manifestly absurd or unreasonable result.

4. In fact, without limiting the generality of the foregoing, the preferred approach is to refer to the circular only where the extrinsic materials are unclear.

P. BRAZIL

Originating in OPC, this imitation of a departmental circular was distributed to a select group in mid-1984, around the time section 15AB was inserted in the Acts Interpretation Act by the *Acts Interpretation Amendment Act 1984*.

Public Sector Reform

Thirteen Bills considered important to the Fraser government's budgetary, education and welfare policies triggered the first of two double dissolutions in the 1980s. From September 1981 the Senate, in which the government did not have a majority, twice rejected or failed to pass nine sales tax amendment Bills and four others. These included some dealing with Canberra's tertiary educational institutions, the Australian National University and the Canberra College of Advanced Education – forerunner to the University of Canberra, the College was founded in 1967. On the Prime Minister's advice, on 4 February 1983 the Governor-General issued a proclamation dissolving both Houses of Parliament. At the general election on 5 March the government was defeated and a Labor Government led by Bob Hawke came to power. The previous regime of stringent governance and constant review opened the way for the new government to continue a bipartisan quest for a more efficient, accountable and responsive public service. Major legislative and structural reform of public sector administration followed.

Described in the *Reforming the Australian Public Service* White Paper in December 1983, reform objectives were legislated quickly by the *Public Service Reform Act 1984*. Provisions for streamlining personnel management were contained in the *Public Service Legislation (Streamlining) Act 1986*, assented to on 18 December 1986 and implemented in three stages in the first half of 1987. The *Conciliation and Arbitration Amendment Act 1983* abolished the position of Public Service Arbitrator, integrating the public service into the national industrial relations and employment framework. To ensure fairness and equity in administrative actions relating to Commonwealth employees, the Merit Protection and Review Agency was established by the *Merit Protection (Australian Government Employees) Act 1984.* A separate, formal legislative basis for the employment of staff by members of Parliament, potentially independent from public service employment, was created under the *Members of Parliament (Staff) Act 1984*.

While reform stopped short of a new Public Service Act, the Public Service Board was abolished. On 14 July 1987, three days after the Hawke Government was returned at the decade's second double dissolution election, the Prime Minister announced the abolition of the Board – in line with recommendations made by the Efficiency Scrutiny Unit (ESU). Under an Administrative Arrangements Order issued the same day, the Board was replaced by a small Public Service Commission with a single Commissioner and substantially diminished powers and responsibilities. Significant changes to the structure of the federal Ministry and to government departments were made at the same time. The Public Service Board was formally abolished under the *Administrative Arrangements Act 1987*. From September 1987 many of its responsibilities were

devolved to agencies, or transferred to the Departments of Finance and Industrial Relations.

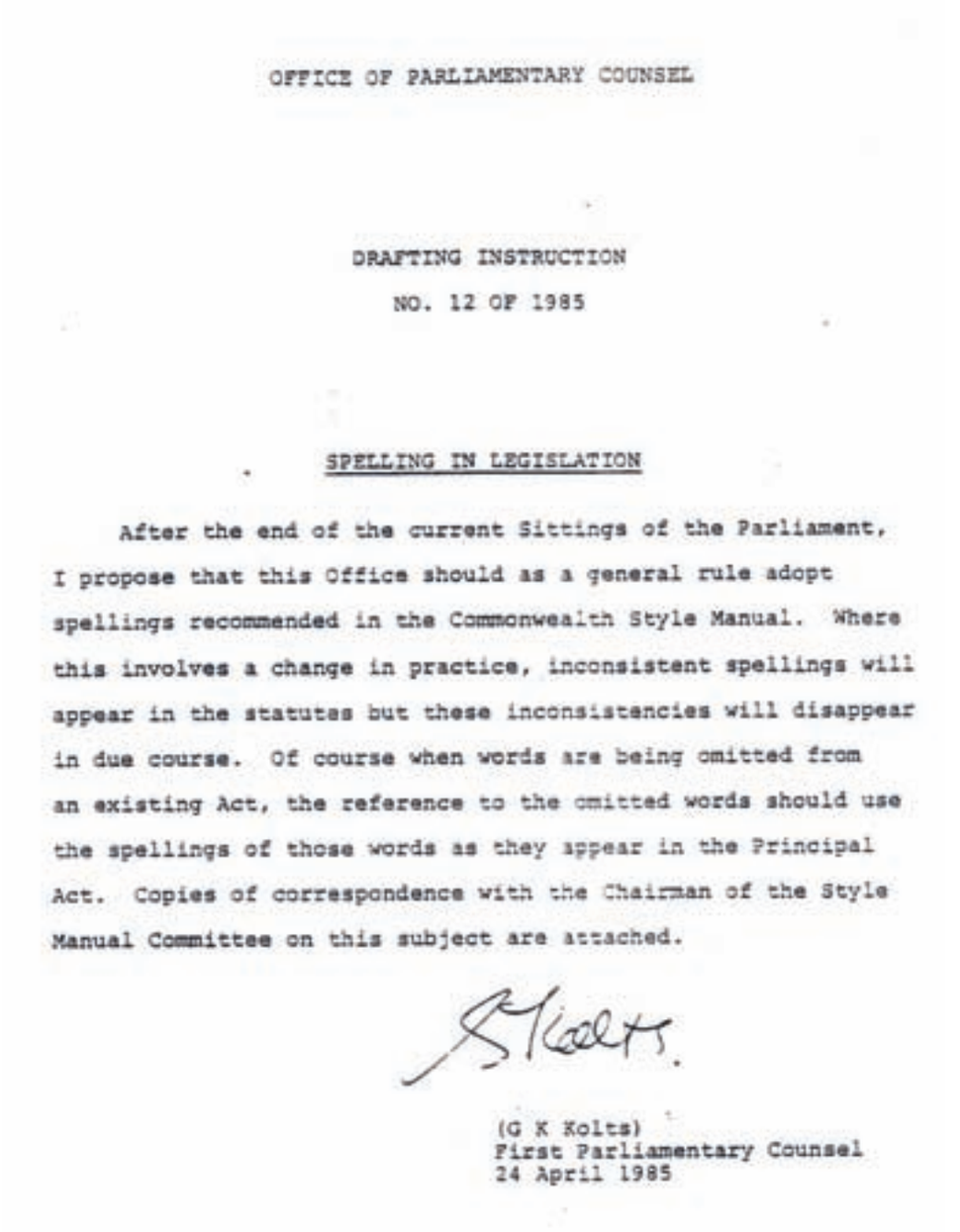
L-R: Hilary Penfold with Second Parliamentary Counsel Ian Turnbull and Geoff Harders, in the John Ewens Conference Room and Library. Robert Garran Offices 1983. [OPC photograph]

Public service reform in the mid-1980s impacted not only on the drafting program but on the management of OPC. As a government agency OPC had to comply with the provisions of the *Public Service Reform Act 1984*. Among the more significant changes was the formation of Senior Executive Service (SES) which replaced the former 'Second Division' as the senior management structure from 1 October 1984. Departmental Secretaries, no longer 'Permanent Heads', were given more independence in the appointment and management of staff. There was provision for consultants to be appointed by Ministers. The merit principle was enshrined in the Act, which also enabled permanent part-time work and enhanced career opportunities for staff at lower levels. Appointments, transfers and promotions to positions were to be governed by procedures precluding patronage, favouritism or unjustifiable discrimination, as specified in an agency Equal Employment Opportunity (EEO) Program. Responsible for the preparation, implementation and review of the Office's first program were the designated Senior Officer Responsible for EEO (Tom Reid) and the EEO Coordinator (Philippa Horner).

After section 22C of the *Public Service Act 1922* came into operation on 2 October 1984, OPC was also required to produce an Industrial Democracy Plan, designed to achieve appropriate participation by employees in the decision making processes of the Office. The first two industrial democracy representatives elected by members of staff were registry officer Karen Hodges and drafter Merrilyn Sernack. Their role was to put staff proposals to management; to ensure that staff were informed and able to make submissions in the event of pending significant management decisions; and to convene general meetings to discuss important decisions where this was desirable. OPC staff also participated in various sub-committees of the industrial democracy council in the Attorney-General's Department, while the Department continued to provide management services to the Office.

One highly contentious issue on which consensus was reached early in the life of the Industrial Democracy Plan was the restriction of smoking in the Office to designated areas. Smoking was banned in all Commonwealth government offices from 1 March 1988, forcing a cultural shift in OPC. Over time, several drafters had been very heavy smokers. A particularly murky meeting being held with defence instructors behind closed doors in Bill Fanning's room once set off the fire alarm, and the office of pipe aficionado Charles Comans was described by one colleague as a 'smoky cave'.

A meeting of OPC staff to discuss plans for implementing industrial democracy in the Office. Robert Garran Offices 1985. [OPC photograph]



OFFICE OF PARLIAMENTARY COUNSEL

DRAFTING INSTRUCTION

NO. 12 OF 1985

SPELLING IN LEGISLATION

After the end of the current Sittings of the Parliament, I propose that this Office should as a general rule adopt spellings recommended in the Commonwealth Style Manual. Where this involves a change in practice, inconsistent spellings will appear in the statutes but these inconsistencies will disappear in due course. Of course when words are being omitted from an existing Act, the reference to the omitted words should use the spellings of those words as they appear in the Principal Act. Copies of correspondence with the Chairman of the Style Manual Committee on this subject are attached.

(G K Kolts)
First Parliamentary Counsel
24 April 1985

In 1985 OPC adopted Commonwealth Style Manual spelling recommendations, including the use of 'ise' rather than 'ize' endings for words.

1980s Reform

Notable legislation drafted at the beginning of the 1980s included the *Human Rights Commission Act 1981*, which established a Commission to replace the former Human Rights Bureau. An expanded complaint handling role and a major focus on research and education were provided for the Human Rights and Equal Opportunity Commission, which was established on 10 December 1986 (International Human Rights Day). Also engendering organisational change was passage of the *Australian Broadcasting Corporation Act 1983*. Renaming the Australian Broadcasting Commission, the Act gave the corporation the function of providing high quality, innovative and comprehensive broadcasting services to entertain, inform, educate, and contribute to and promote a sense of national identity.

Having ratified the 1983 United Nations Convention on the Elimination of All Forms of Discrimination Against Women, the Australian Government implemented the Convention through passage of the *Sex Discrimination Act 1984*. As well as drafting this Bill, and that for the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986*, OPC made a concerted effort to eliminate sexist language from Commonwealth legislation. Measures applied to all new Acts, and to those amended for other purposes included avoiding gender-specific words (such as 'chairman') and masculine personal pronouns where these were intended to refer to both sexes. Drafters persevered with implementing this policy although, as noted in one Annual Report, from time to time it resulted in 'some inelegancies of style'.

Drafted for introduction in the Budget sittings of 1977, but still the first of its kind in Australia when it was finally passed years later, the *Freedom of Information Act 1982* extended the right of the community to access government information. Even longer in gestation had been defence forces disciplinary legislation. Bill Fanning worked on a uniform disciplinary code for all armed services of the Commonwealth during his last years of drafting before retirement in 1966. In 1970, early in his term as Attorney-General, Tom Hughes expressed optimism about the impending passage of a Bill which would replace the separate disciplinary provisions still operating for Australian army, navy and air force personnel. However, another decade of negotiations and debate was needed before the disciplinary laws, which referred back to English statutes passed in the nineteenth century and adopted for Australian purposes, were replaced by the *Defence Force Discipline Act 1982*. The common code also removed the inconvenience of outmoded referential provisions dating back to the English law.

Investigation of one multi-million dollar scheme uncovered by the Costigan Commission brought to light severe management and staffing difficulties in the Crown Solicitor's Division of the Attorney-General's Department. In 1974, staff in the Deputy

Crown Solicitor's office in Perth had been made aware of this conspiracy to defraud the Commonwealth, but did not prosecute. Disciplinary action against the officers involved was supplemented by a thorough examination of the staffing needs of the Division, which had been subject to the stringent resourcing restrictions of the previous decade. Former drafter Lindsay Curtis, by then a Division Head in the Attorney-General's Department, served on the Review Steering Committee which was chaired by Deputy Secretary, Pat Brazil. Following the change of government in March 1983, Brazil was appointed Secretary to the Department. He instigated the first major restructuring and reorganisation of the Department in 30 years. Under this, the Legislative Drafting Division became part of the new Commercial and Drafting Division, which included Drafting Branches 1 and 2, and an ACT Drafting Branch. Staffing numbers, management, training and communication in the Crown Solicitor's Division were substantially improved; particular attention was paid to the monitoring of work backlogs; and the Division was reconstituted as the office of the Australian Government Solicitor from July 1984. The *Director of Public Prosecutions Act 1983* created a new Director of Public Prosecutions, separate from the Department and equipped with sufficient powers and expert resources to investigate and prosecute complex fraud cases.

First and second from left facing camera: First Assistant Parliamentary Counsel Hilary Penfold and First Parliamentary Counsel Geoff Kolts at a meeting of Australian Parliamentary Counsel in Melbourne, June 1984. [OPC photograph]

Significant electoral reform was implemented by the *Commonwealth Electoral Legislation Amendment Act 1983*. An independent Australian Electoral Commission was established to administer the federal electoral system. Enrolment and voting became compulsory for Australian Aboriginals and Torres Strait Islanders, and the franchise qualification was changed to Australian citizenship. Other changes related to the introduction of a group voting ticket for the Senate; registration of political parties to permit the printing of party names on ballot papers; introduction of public funding of election campaigns; disclosure of political donations and electoral expenditure; and earlier closing times for polling places. Parliamentary representation was increased, to 76 Senators and 148 Members of the House of Representatives. Later amendments provided for Territory representation according to population quotas, determined in the same manner as for the original States.

Plainer Language

For various reasons, Commonwealth laws had become increasingly complicated since the Second World War. Greater diversity and complexity of commerce and industry, larger public sector administration, the necessity to regulate wider government responsibilities and to balance competing needs across this spectrum all contributed. The High Court's tendency towards literalism especially in relation to taxation legislation forced drafters to draft with extreme precision, often at the expense of simplicity. Considerable debate and criticism of complex legislation led to significant attempts in both the United Kingdom and the United States of America to simplify the language of their laws. A 'Plain English' movement in Australia was spearheaded by Professor Robert Eagleson, Assistant Professor of English at the University of Sydney and later (along with Dennis Murphy, head of the Parliamentary Counsel's Office of New South Wales) a Director of the Centre for Plain Legal Language within the University. Professor Eagleson was engaged as a consultant to various government and business projects aiming to apply principles of plain English in their policies. An October 1984 report by the Senate Standing Committee on Education and the Arts, *A National Language Policy*, stimulated much public discussion on the need to reform language used in statutes and instruments. In May 1985 the Victorian government introduced initiatives towards adopting a simpler drafting style for its legal documents.

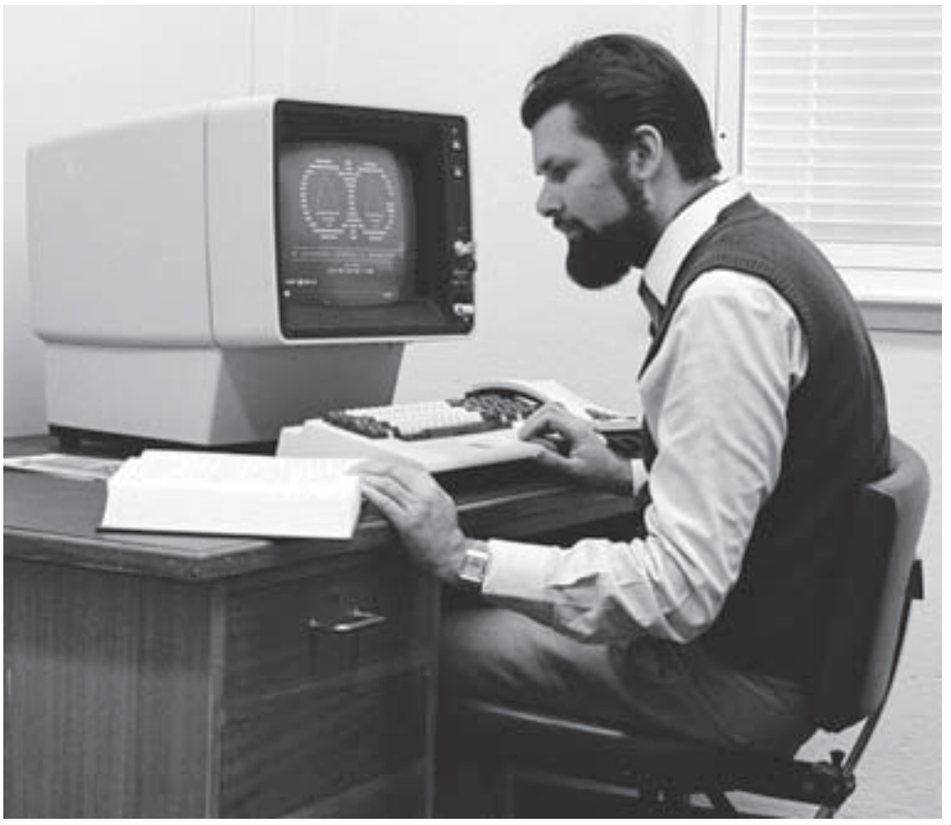
Publicly outspoken about the rights of citizens to understand the laws and regulations applying to them, Robert Eagleson was especially critical of Commonwealth legislation. In the OPC Annual Report for 1984-1985, First Parliamentary Counsel Geoff Kolts went to some lengths to explain the issue from the drafters' perspective. Maintaining that 'no sensible person would expect a law to be as readable as a newspaper or a work of popular fiction', Kolts pointed out the constraints imposed on drafters, including the existing state of law, complexity of subject matter and lack of time. He defended the

requirement for laws to be unambiguous and declared: 'The drafter of legislation is not likely to receive any thanks from the Government for drafting a law that is easily comprehensible but is imprecise'.

Describing the necessity to satisfy differing requirements of parliamentarians, the public and the courts, Kolts wrote that it was of paramount importance to get the statute right. Stating that OPC was 'alert to the need to try to make the language of the statutes as clear and simple as possible', he noted that endeavours to improve were not being helped by attempts 'to force the drafting of statutes into fixed parameters' using unrealistic formulae-based rules. Long concerned with the tension between precise regulation of complex subject matter and ease of comprehension for the average reader, OPC developed a continuing policy of simplifying Commonwealth legislation as far as this was possible without loss of accuracy. To this end, drafters held discussions with Professor Eagleson, who agreed to conduct a study of selected statutes and make specific suggestions for improvement. A year later, no recommendations had been received and nothing further was reported about the agreement.

Computerised Drafting

Computerised methods for creating, updating, editing and printing documents, and for retrieving and sharing information, revolutionised work processes across the public service from the 1970s. The potential for enhancing drafting work was enormous. By July 1977 the Attorney-General's Department had established Australia's earliest computer-based legal information retrieval system. First to be put on the database were the consolidated Acts of the Commonwealth Parliament up to 1973. Plans for expansion included the Annotated Constitution, other Commonwealth legislation, case law and state statutes. In December 1982 the Department's first large scale computer was installed, temporarily at Fyshwick. The computer centre was transferred to the Robert Garran Offices in August 1984 and the computer processor upgraded. More than 150 terminals around Australia had access to the Department's leading edge legal information retrieval system, SCALE (Statutes and Cases Automated Legal Enquiry). Other departmental computer systems and databases included those for human resource and records management, litigation support, storage and retrieval of departmental opinions, statistical reporting on freedom of information requests, a bankruptcy index and a literature censorship list. Drafters initially shared one terminal located in the Office. A second terminal was installed in mid-1983.



Acting Senior Assistant Parliamentary Counsel, Kerry Jones, using the computerised legal information retrieval system, SCALE, in 1983. [OPC photograph]

Computer-assisted legal research and printing greatly facilitated the preparation of Bills and production of reprints. Early printing technology had its limitations, forcing some adjustments in the printing style for Bills. Printers preferred to use endnotes in preference to footnotes because the latter had to be keyed in at an appropriate place in the middle of the text with an operator giving the computer a specific command to print a footnote, only nine of which could be accommodated in one printing job. Wider margins were required to file pamphlet copies and reprints of Acts in special binders. There were some teething problems with computer typesetting. For instance, deletion of words with commands tied to them would reset lines which were not intended to be altered, requiring special vigilance on the part of the proofreaders. Some idiosyncrasies carried over from hot metal printing were able to be ironed out. Titles of Bills and Acts which had previously used a mix of Roman and italic type, because italics had not been available in monotype for brackets and figures, could now be presented in all italics.

Various changes required amendments to laws such as the Acts Interpretation, Amendments Incorporation and Statutory Rules Publication Acts.

In 1983 the electric typewriters in the Office of Parliamentary Counsel were replaced with word processing equipment. The new technology was welcomed with enthusiasm, as recorded in the 1982-1983 Annual Report:

> *Previously, draft Bills were typed and, at an early stage in the drafting, printed copies were obtained from the Government Printer. As the drafts were revised, fresh prints were prepared by the printer. Now all Bills are prepared on word processors and are sent to the printer for printing only when the drafting has been completed and the Bills are ready for introduction into the Parliament. The secretarial staff who are called upon to use the word processors have adapted remarkably well to the new equipment. There are expected to be substantial cost savings to the Government as a result of the introduction by the Office of word processors. Also, the time spent by professional officers in checking drafts has been substantially reduced.*

Drafter Geoff Harders with Executive Assistant Michelle Webb, using the new word processing equipment. Robert Garran Offices 1983. [OPC photograph]

Executive Assistant Madge Williams, using one of OPC's first word processors. Robert Garran Offices 1983. [OPC photograph]

Reliance of the Office on the work done by the non-drafting staff was also stressed in the Annual Report for 1982-1983. The report noted the 'heavy dependence' of the professional officers on support such as keeping up-to-date 'a complete set of working copies of Commonwealth Acts'; introduction of new processes for obtaining messages by the Governor-General under section 56 of the Constitution; administrative arrangements relating to the obtaining of Royal Assent to Bills; and maintaining records relating to Acts passed and Proclamations made during the year. Records of Acts passed were distributed throughout Australia, subsequently forming the basis of the indexes to the Annual Volumes of Acts of the Parliament. Constantly updated, the record of proclamations was fed into the Attorney-General's Department's computer, making the information available to numerous users throughout Australia.

This essential clerical support was severely jeopardised after a brief period using word processors. An extreme incidence of repetitive strain injury (RSI) left the Office with only one full-time and one part-time stenographer not suffering from the condition by the end of 1984-1985. Short-term staff needed to be hired, at considerable expense. OPC's word processing equipment was removed and electric typewriters were returned, with this decision explained in the Annual Report:

> ***Use of modern technology and some adverse consequences****. For the first ten months of the year the Office continued to use word processing equipment, which greatly facilitated the drafting process. However, so many cases of repetition strain injury occurred among secretarial staff that an indefinite moratorium had to be placed on the use of the equipment. It was recognized that this would reduce the output of the Office in the Budget Sittings but the cost in human terms was so great that it was decided to revert to electric typewriters and make greater use of the services of the Government Printer. The situation has been drawn to the attention of the Government with an expression of opinion that the workload placed by the*

drafting staff on the stenographers to meet tight deadlines imposed by the Government and to deal with the end-of-Sittings rush of Bills was a major contributing factor to the injuries. It is essential to secure a real improvement in the programming of legislation so as to try to eliminate the problem. Strains of the kind that were placed on the secretarial staff in the last two Sittings were quite unacceptable and must be avoided. Action is also being taken to improve the working conditions of these officers and to obtain additional staff in order to reduce the work pressures.[18]

Word Processing

On different occasions the Hon Justice Michael Kirby AC CMG, Judge of the High Court of Australia, recounted the reaction of retired First Parliamentary Counsel John Ewens when he first saw a word processor. Speaking at the Judicial Conference of Australia on 7 November 1998, Kirby J said:

> *I remember the first time we introduced word processors at the Australian Law Reform Commission in the late 1970s. One of our newly appointed Commissioners was Mr John Ewens, long-time First Parliamentary Counsel of the Commonwealth. When his eyes fell upon the miracle of word processing, I saw a look of anguish. He was thinking: if only he had had such a facility in the years of statutory drafting it would have avoided the repetitive retyping of corrected text which, with carbon paper and consequent delay, was the feature of legal drafting twenty-five years ago.*
>
> [Third Annual Colloquium, 'Australia's Courts – A Quarter Century of Change']

In his obituary for Ewens in the *Adelaide Law Review* Kirby J recalled the enthusiasm with which Ewens embraced change at the Australian Law Reform Commission:

> *He remained open-minded, creative and blunt speaking to the last. When, in the Law Reform Commission, his eyes first fell upon the word processor, his JOY was endless. For the drafting and redrafting of statutes, the new invention was nothing short of a miracle. 'What I could have done with this!', he exclaimed. Yet without it his achievements were great and enduring.*
>
> [*Adelaide Law Review* 14(2) 1992 pp. 179-180.]

[18] Office of Parliamentary Counsel, *Annual Report 1984-1985*, p. 216.

Loosening Traditional Ties

Legislation passed during the 1970s and 1980s further loosened Australia's ties with the British government. Unlike the 1953 version of the Act, the *Royal Style and Titles Act 1973* no longer dealt with the style and titles used in relation to realms other than Australia and its territories. The new Act's preamble stated that the Government of Australia proposed a change in the form of royal style and titles to be used. Created 'Queen of Australia' under the Act the Queen indicated to Parliament that it would give her pleasure to approve the legislation personally, and assent was arranged for her next visit to Canberra on 19 October 1973. Beginning with the *Privy Council (Limitation of Appeals) Act 1968*, which ended all appeals to the Council in matters involving federal legislation, the Australian Parliament exercised its right under section 74 of the Constitution to make laws to prevent appeals to the Privy Council. Provisions in the Constitution to allow assent of a Bill to be reserved for the monarch's pleasure, and specifying that proposed laws containing any limitation on the prerogative of the Crown to grant special leave of appeal from the High Court to the Privy Council must be reserved, were last exercised in 1975. Assented to by the Queen, the *Privy Council (Appeals from the High Court) Act 1975* prevented appeals being taken from the High Court to the Privy Council without a certificate from the High Court. The Court made it clear in a decision in 1985 that it would not issue such a certificate.[19] Appeals to the Privy Council from State Supreme Courts remained available until 1986.

Most noteworthy of the legislation drafted to remove residual constitutional links with the United Kingdom was the Australia Bill. Drafting begun in 1982 continued as the Prime Minister and all State Premiers negotiated about the legislation to be introduced into each Parliament to effect uniform change. Each of the Australian States and the Parliament of the United Kingdom passed individual enabling Acts before the federal Parliament enacted its own. None of these Acts specified a commencement date, which had to be common to all. Passed by the Parliament, the Australia Bill was assented to by the Governor-General Sir Ninian Stephen on 4 December 1985. The *Australia Act 1986* came into effect on 3 March 1986 by a proclamation signed by Queen Elizabeth II at Government House in Canberra. Signed on 2 March, the proclamation stated that the Act would commence at 5 am on the next day. Eliminating remaining associations between Australia's laws and judiciary and their British counterparts, the 'Australia Acts' included the abolition of the constitutional provisions for appeals from State courts to the Privy Council in London. Defined as a 'sovereign, independent and federal nation' under the Act, Australia retained the Queen as its head of state.

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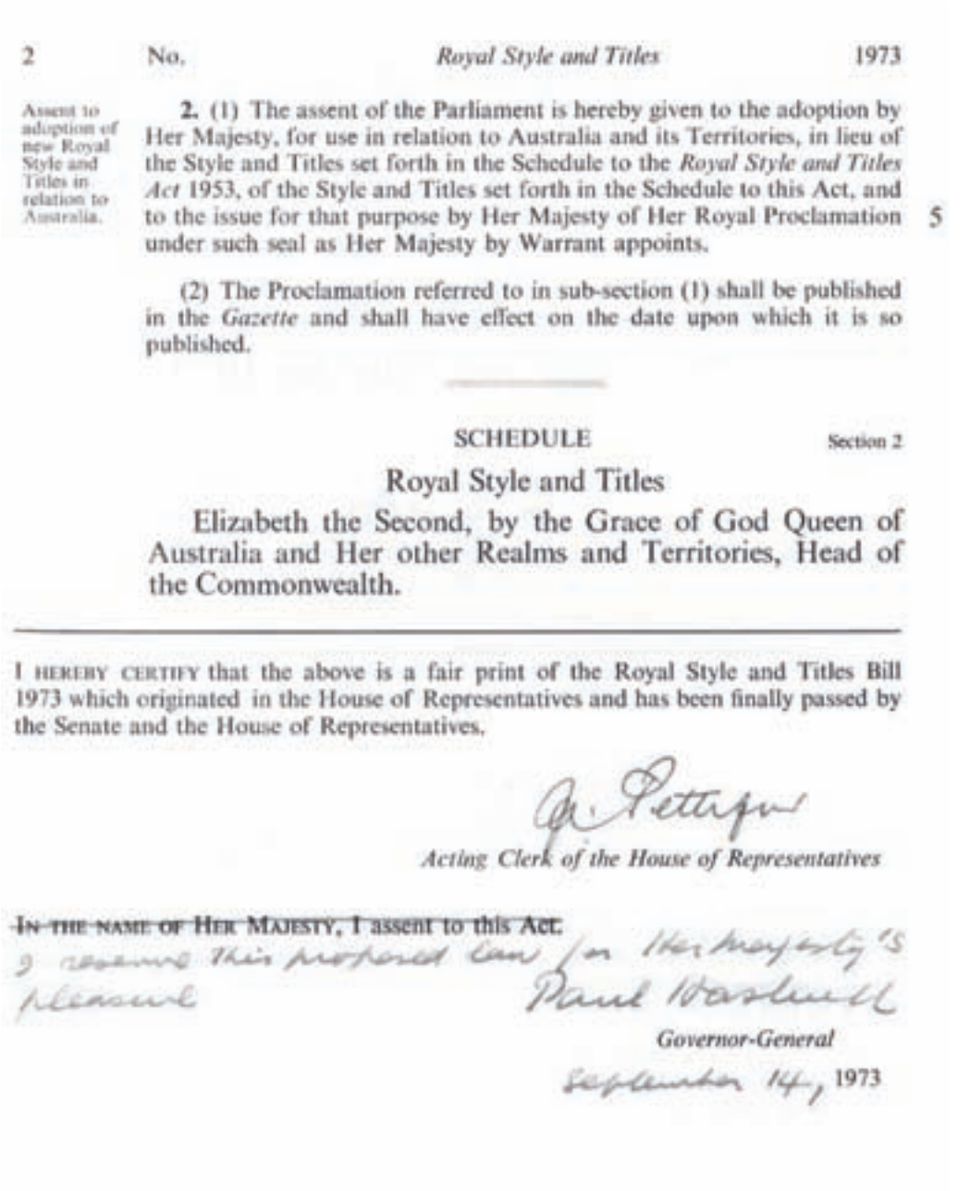
[19] *Kirmani v Captain Cook Cruises Pty Ltd (No 2)* [1985] HCA 27; (1985) 159 CLR 461.



2 No. *Royal Style and Titles* 1973

Assent to adoption of new Royal Style and Titles in relation to Australia.

2. (1) The assent of the Parliament is hereby given to the adoption by Her Majesty, for use in relation to Australia and its Territories, in lieu of the Style and Titles set forth in the Schedule to the *Royal Style and Titles Act* 1953, of the Style and Titles set forth in the Schedule to this Act, and to the issue for that purpose by Her Majesty of Her Royal Proclamation under such seal as Her Majesty by Warrant appoints.

(2) The Proclamation referred to in sub-section (1) shall be published in the *Gazette* and shall have effect on the date upon which it is so published.

SCHEDULE Section 2

Royal Style and Titles

Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

I HEREBY CERTIFY that the above is a fair print of the Royal Style and Titles Bill 1973 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Acting Clerk of the House of Representatives

~~IN THE NAME OF HER MAJESTY, I assent to this Act.~~

I reserve this proposed law for Her Majesty's pleasure

Paul Hasluck

Governor-General

September 14, 1973

With the words 'I reserve this proposed law for Her Majesty's pleasure', Governor-General Sir Paul Hasluck set aside the proposed Royal Style and Titles Act for the Queen's assent in 1973. [Digital copy courtesy of the National Archives of Australia.]

Australia's national anthem was officially changed in 1984. From as far back as 1840 numerous commercial and official competitions had been held to find a suitable substitute for *God Save the Queen* – or 'King'. Debate on the topic was refreshed by the Olympic Games, held in Melbourne in 1956. General interest in a new anthem was swelling by the early 1970s. A government-sponsored competition in 1973 attracted thousands of entries suggesting both new words and music. After a public opinion poll on three possible options, which sampled 60 000 people in 1974, Prime Minister Gough Whitlam announced that *Advance Australia Fair* would be the national anthem, except on specifically Royal occasions, when both it and *God Save the Queen* would be played. Following the change of government, in 1976 *God Save the Queen* was reinstated for Royal, vice-regal, defence and loyal toast occasions, with *Advance Australia Fair* to be played on all other official occasions. In May 1977 a national plebiscite (held in conjunction with the referendum) offered voters four anthem choices, including *God Save the Queen.* Despite a strong result in favour of *Advance Australia Fair* there was still some widespread opposition to formally changing the anthem. In April 1984 the Governor-General issued a proclamation finally declaring *Advance Australia Fair* to be the national anthem. *God Save the Queen* was designated as the Royal anthem, to be played at public engagements in Australia attended by the members of the Royal family.

OPC staff at Robert Garran Offices in 1986. In the centre of the front row was Max Mutyavaviri. A trainee drafter from Zimbabwe, he commenced a six months placement in the Office in March that year. [OPC photograph]

L-R: Iain McMillan, Marie Gallagher, Charles Walker, John Leahy, Richard Sarvaas, George Witynski and Kath Locke greeted Pope John Paul II during his visit to Canberra. Robert Garran Offices November 1986. [OPC photograph]

The Australia Card Bill

Lacking a majority in the Senate during its second term in office, the Hawke government was unable to secure passage of the Australia Card Bill, intended to introduce a national system of personal identification to be administered by the Health Insurance Commission. Introduced on 22 October 1986 by the Minister for Health and passed by the House of Representatives, the Bill encountered strong opposition, both publicly and in the Senate. Following examination by the Senate Standing Committee for the Scrutiny of Bills, the Bill proceeded solely on the basis of a minority report, but was defeated at the motion for the second reading in the Senate on 10 December 1986. Reintroduced in the same form on 18 March 1987 the Australia Card Bill 1986 [No. 2] was again passed by the House, and again defeated in the Senate on 2 April 1987. Alleging that the Senate had obstructed other measures and declaring the situation critical to the workings of the Parliament, on 27 May 1987 the Prime Minister advised a double dissolution.

At the resultant general election on 11 July the Hawke government was returned, but was still without a Senate majority. Even though it had triggered the double dissolution, the Australia Card was not a major election campaign issue. With popular opinion against the Card nonetheless swelling, the Bill was not put to a joint sitting. Passed

again by the House of Representatives, it was being debated in the Senate on 23 September 1987 when the Opposition released details of advice which they claimed indicated that the Bill was 'flawed' and could not be brought into effect. The Senate subsequently resolved, on a government motion, that the Senate Standing Committee on Legal and Constitutional Affairs, to which the Bill had been referred, should give it no further consideration. The Bill was laid aside on 9 October 1987.

Drafted in a climate of concern about tax evasion and cheating on welfare payments, the Australia Card Bill created extraordinary public controversy. The proposal that every Australian be assigned a unique identification number, and accompanying 'Australia Card', to be used for taxation, national health insurance, welfare and other purposes, with relevant data held in a central data bank, incited the ire of civil libertarians protesting invasion of privacy. Fuelled by academic articles, letters to newspapers, public rallies and demonstrations, pressure on the government to abandon plans for the Australia Card escalated. Many prominent Australians, left-wing and conservative alike, rallied to oppose the scheme. At that time President of the Court of Appeal for New South Wales, Michael Kirby was one of the first to raise significant criticisms. Then a rock singer, later a federal Labor Minister, Peter Garrett was a founding member of the Australian Privacy Foundation, initially formed to coordinate public resistance against the Australia Card. Civil libertarian and Labor Party Senator, George Georges, resigned from the Party after voting against the Australia Card Bill in December 1986.

It was a former drafter who ultimately thwarted the proposed law. Ewart Smith, who had retired as Deputy Secretary of the Attorney-General's Department in April 1980 and from the Administrative Appeals Tribunal early in 1987, studied the Australia Card Bill and exposed a technical obstacle to its implementation which had previously gone unnoticed. Even if the Australia Card Bill was passed, the operation of the Act would depend significantly on regulations. Disallowance of the regulations, which was within the 'hostile' Senate's power would, Smith argued, make the Act ineffective. While this assessment was supported by some other legal experts, another former drafter, Dennis Pearce (then Professor of Law at the Australian National University) raised what he described as a 'tenable argument' against it. He suggested that the mere tabling of regulations could put the Card starting date into effect, whether or not they were subsequently 'disallowed' by the Senate. Neither theory was tested as the government, lacking complete unity on the proposed scheme within its own ranks and facing the likelihood of protracted litigation in the High Court if the legislation was passed, decided to withdraw the Bill.

One point stressed by Ewart Smith, and agreed by many expert commentators, was that the Australia Card Bill itself was not 'flawed'. There was no omission or mistake in it, the drafters doing properly what needed to be done to develop a Bill which had been given a high priority by the Government. With other important legislation put aside the

drafters, working under constant pressure and to tight deadlines, were praised by the Department of Health for 'the magnitude of the drafting work undertaken, the quality of the output, and the speed with which the task was accomplished'. Appreciation was also recorded for the drafters' efforts in facilitating a program of state negotiations, and for the very many difficulties dealt with in interdepartmental consultation and coordination. The practical intent of the time-honoured convention of using regulations to set the commencement date for the Bill was explained in some detail in OPC's 1987-1988 Annual Report:

> *When the Bill was introduced, the instructing Department did not know when it would be ready to start up the administration of the new system, so the two relevant dates could not be fixed in the Bill. They had to be fixed by delegated legislation, so they could be changed if the timetable was delayed. The Bill could have provided for this to be done by proclamation or Gazette notice, neither of which would have been subject to disallowance. However, for decades it has been normal practice for drafters to use regulations in such cases, for the very reason that regulations can be disallowed. A Bill providing for delegated legislation is more acceptable to the Parliament if the delegated legislation can be controlled by the disallowance power.*
>
> *However, until September 1987, the disallowance power has been used for the purpose of getting regulations into a form acceptable to the Parliament. Never before has it been used for the purpose of blocking the making of regulations altogether. If it had, many Acts could have been made unworkable. ...*
>
> *Using Gazette notices denies the Parliament the legitimate use of the disallowance power. On the other hand, including the administrative material in the Bills has two serious disadvantages. First Acts cannot be amended with the same facility as regulations, so it is more difficult to make changes to meet changed circumstances. Secondly, parliamentary time should not be taken up in considering matters of administrative detail.*[20]

[20] Office of Parliamentary Counsel, *Annual Report 1987-1988*, pp. 283-284.

L-R: Julie Griffin (kneeling), Peter Folbigg, Marie Gallagher and Karen Hodges preparing boxes of Bills for transport from Robert Garran Offices to Parliament House. In the months before the July 1987 double dissolution election triggered by the Australia Card Bill, a huge amount of legislation was scheduled for introduction. Support staff were so busy during this period that some galley proofs were read and edited at the printing office overnight. On one occasion so many Bills needed to be delivered to Parliament that a small truck was hired for the task. OPC staff drove the truck to Parliament House and unloaded the Bills. When the weight of the boxes was removed, the truck rose and became wedged under the portico at the back of the building. [OPC photograph]

Constitution Alteration Bills 1988

Ewart Smith also publicly supported the successful campaign against four proposals to amend the Constitution in 1988. All four were derived from recommendations of a Constitutional Commission which was established in December 1985. The Commission was set up to review aspects of the Constitution pertaining to: Australia's status as an independent nation and a federal parliamentary democracy; the framework for economic, social and political development; an appropriate division of responsibilities between levels of government; and the guarantee of democratic rights. Resultant moves towards constitutional change were initiated on the basis of an interim report, presented by the Commission before its final report on 30 June 1988.

Timed to coincide with the bicentenary of European settlement in Australia, four Constitution Alteration Bills were introduced on 10 May 1988. The Constitution Alteration (Parliamentary Terms) Bill proposed to alter the constitution to reduce Senate terms from six to four years, and increase House of Representative terms from three years to four years. It also proposed, for the fourth time, that Senate and House elections occur simultaneously. The Constitution Alteration (Fair Elections) Bill proposed to include in the Constitution a guarantee that all Commonwealth, State and Territory elections would be conducted democratically. Recognition of local government by adding an additional section to the Constitution was intended under the Constitution Alteration (Local Government) Bill. The fourth proposal, contained in the Constitution Alteration (Rights and Freedoms) Bill, sought to enshrine in the Constitution various civil rights, including freedom of religion, rights in relation to trials, and rights regarding the compulsory acquisition of property by government. Every proposal was rejected at the referendum held on 3 September 1988. None obtained a majority in any State or Territory, except for the fair elections proposal which was favoured by voters in the Australian Capital Territory. The rights and freedoms proposal received the lowest overall 'yes' vote ever recorded in an Australian referendum.

L-R: Paul Wan, Camilla Webster, Ian McMillan, Charles Walker, Jennie Nicholson, Lindsay King, Adam Browne and Nigerian trainee drafter Hannatu Balogun at a regular morning tea gathering of junior staff in Charles Walker's office. Returning to Nigeria, Hannatu Balogun was later appointed as a judge of the Kaduna State High Court. Robert Garran Offices 1989. [OPC photograph]

OPC's home at Robert Garran Offices, circa 1991. [OPC photograph]

Clearer Law

Clearer Law

Taking up appointment as the Commonwealth Ombudsman from 1 July 1986, Geoff Kolts resigned as First Parliamentary Counsel. Senior of the two Second Parliamentary Counsel, Ian Turnbull was appointed to succeed Kolts. Scottish-born, Turnbull had worked as a drafter in Rhodesia before migrating to Australia and joining the Attorney-General's Department in 1968. Geoff Harders remained as Second Parliamentary Counsel until March 1987, and was later succeeded by Eric Wright. Appointed Second Parliamentary Counsel in December 1986, Hilary Penfold was the first woman to achieve this level in Commonwealth drafting. At 30 June that year, only six of the 20 full-time drafters (but 16 of the 19 support staff) were women. Fifteen more women joined OPC's drafting contingent during the next decade.

Autumn photograph of OPC staff in 1988. Included in the group was the exchange drafter from the United Kingdom, Catherine Johnson (centre of those standing). [OPC photograph]

Simpler Drafting

Long an advocate of simplifying drafting, Ian Turnbull initiated a review of drafting style soon after his appointment as First Parliamentary Counsel. Under his leadership OPC's drafters espoused an ongoing process of analysing innovations in plain language and readability, assessing their legal and practical implications.

Appointed Queen's Counsel for the Australian Capital Territory on 14 December 1989, FPC Ian Turnbull attended the ceremony for the announcement of the appointment of senior counsel (the 'silk ceremony') at the High Court on 5 February 1990. [Photograph courtesy of Ian Turnbull]

Techniques judged likely to simplify laws within the constraints of time, precision, complex policy and the need to complement the existing language of Acts were adopted. Numerous ideas circulated and discussed in December 1986 resulted in the issue of many Drafting Directions early the following year. New approaches applied basic rules for simple writing and over time introduced other devices to make Bills easier to read and understand. These included more logical arrangement of text and improved usage of section headings, definitions and explanatory notes. Further innovations saw examples, readers' guides, rate calculators and purpose clauses incorporated in legislation, as well as graphic material such as flow charts and maps.

In 1987 Turnbull arranged for the *Acts Interpretation Act 1901* to be amended to ensure that changes in style and use of examples would not affect the meaning of amended laws.[1] Collaboration and consultation on drafting style were promoted. Plain English consultant Professor Robert Eagleson was invited to share his expertise in the use of plain legal language. In-house seminars were also presented by drafters involved in simplification exercises in the early 1990s. Both the social security and veterans' affairs legislation were subjected to substantial rewrites at this time. A rewrite of Commonwealth sales tax legislation completed in 1992 experimented with simplifying complex policy as far as was possible to draft in 'non-specific' terms.

OPC's innovative approach and the simpler Bills which resulted from it soon attracted recognition and supportive comment. Exposure drafts and final versions of simplified Acts were generally well received. At the end of 1986, Attorney-General's Department

[1] Sections 15AC and 15AD were inserted by the *Statute Law (Miscellaneous Provisions) Act 1987* [No. 141, 1987].

Secretary Pat Brazil noted publicly that simpler and better legislative drafting was well and truly on the national agenda. He judged that Australia was well served by Parliamentary Counsel which, due to tensions between simplicity and certainty, faced large and increasing problems.[2] Legal Adviser to the Senate Standing Committee for the Scrutiny of Bills, Professor Jim Davis, deemed drafting style to be much improved in the four years preceding 1991 and the resultant Bills much easier to read. OPC drafters were invited to share the results of their work in domestic and international forums which were increasingly concerned with the use of plain language drafting.

Changes in Style not Meaning

Section 15AC was inserted in the Acts Interpretation Act in 1987:

'Where:

(a) an Act has expressed an idea in a particular form of words; and

(b) a later Act appears to have expressed the same idea in a different form of words for the purpose of using a clearer style;

the ideas shall not be taken to be different merely because different forms of words were used.'

Meetings of the Parliamentary Counsel's Committee (PCC) frequently discussed the style and form of legislation. Looking to adopt simpler styles, the Office of Legislative Drafting in the Attorney-General's Department kept in touch with developments in OPC, as did drafting offices in the United Kingdom, the United States of America and Canada. Highly complimentary about OPC's innovations, the President of the Statute Law Society, Lord Renton, invited Ian Turnbull to address the Society in London on Australia's approach to clear legislative drafting. The paper presented in late 1990 was subsequently published in the *Statute Law Review*. An article by Canadian lawyer David Elliott in the *Michigan Bar Journal* in June 1991 described OPC as 'perhaps the most innovative legislative drafting office in the [British] Commonwealth'. Techniques for planning drafts, developing good writing habits while avoiding bad ones, and for using aids to understanding were encapsulated in a *Plain English Manual*. First published by OPC in 1993, it was disseminated to other drafting offices. The manual went beyond formal 'plain English' rules to focus more on methods of improving readability.

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[2] P Brazil, *An Address on Developments in Statutory Interpretation and Parliamentary Drafting – an end-of-year report on the position in Australia*, ANU Public Law and Administration Discussion Group, 8 December 1986.

Editorial team. L-R: Editor Allan Greenwood, Bills Officer Charles Walker, and proofreader Kath Locke. Robert Garran Offices circa 1991. [OPC photograph]

Steve Reynolds and Janis Dogan at work Robert Garran Offices circa 1991. [OPC photograph]

Maturation

Until 1989 most of OPC's personnel and financial affairs were handled by the Attorney-General's Department. Office support staff, under the supervision of the Legislation Officer, were primarily concerned with support of drafting and arrangements for production of Bills – proofreading, printing, and maintenance of paste-ups and library resources. The officer doing paste-ups needed to become increasingly technologically skilled after responsibility for supplying Australia-wide information on the enactment of legislation was added to their duties. In 1987-1988 the Department moved to program budgeting and OPC, which became a prescribed authority under the *Audit Act 1901* with effect from 1 July 1989, presented a separate Annual Report and financial statements for the first time in the 1988-1989 financial year. Implementing its own corporate plan in December 1990, and gradually assuming responsibility for entering data into the FI$CLE financial management system, OPC took over an expanded range of financial functions from 1 July 1991. By the time the Department implemented a user-pays regime and became the Attorney-General's Legal Practice on 1 July 1992 the Office was financially independent.

Critical support to the preparation and production of Bills. Bills Officer Charles Walker with drafter Marjorie Todd. Robert Garran Offices circa 1991. [OPC photograph]

Physical separation from the Attorney-General's Department added to the sense of autonomous identity of the Office. In September 1992, after nine years in Robert Garran Offices, OPC moved to Motor Trades Association (MTA) House at 39 Brisbane Avenue in Barton. This was the first time the Office had premises separate from the Department. Responsible at last for their own accommodation, fit out and corporate services, OPC staff benefited from less overcrowded offices, sufficient conference and meeting rooms and their own well appointed legal library. New ergonomically sound furniture was provided. Low on the Department's priority list for the allocation of furniture, OPC staff had previously made do with that handed down (or occasionally scavenged) from other areas. A 'discernible' improvement in staff satisfaction with the working environment was reported after the move.

Janis Dogan, packing for the move to MTA House. Robert Garran Offices 1992. [OPC photograph]

Parliament had a new home as well. Extended and altered on numerous occasions the provisional Parliament House, originally planned to be in use for 50 years, was long outgrown. Following lengthy debate on the recommendations of a joint select committee established in December 1965, Parliament passed the *Parliament Act 1974*, determining Capital Hill as the site for the erection of a new Parliament House. A Joint Standing Committee on the New and Permanent Parliament House was appointed in June 1975 to represent the Parliament's interests in the process. Aiming for occupation by the 1988 bicentenary of European settlement in Australia, a statutory authority to control design and construction was established under the *Parliament House Construction Authority Act 1979*. A competition was held for the design of the building. Commencement of the work was authorised by Parliament on 28 August 1980, and Prime Minister Malcolm Fraser turned the first sod on the site three weeks later. The new Parliament House was officially opened by Queen Elizabeth II on 9 May 1988 – the anniversary of the first sitting of the federal Parliament in 1901. Sixty-one years after taking up residence, Parliament sat for the last time in the provisional House on 3 June 1988. The first sitting in the new Parliament House was on 22 August 1988. At this time,

following the electoral reforms of 1984, Parliament consisted of 76 Senators and 148 Members in the House of Representatives. For reasons of space, and the discontinuance of the practice of having drafters attend Parliament during debate of Bills, a suite initially planned to accommodate drafters working at the new Parliament House was never provided.

MTA House. [MTAA photograph]

OPC's new library in MTA House, 1992. [OPC photograph]

Happily autonomous. OPC staff on the front steps of their new home at MTA House in 1993. [OPC photograph]

Preparatory to the 11 May 1989 implementation of self-government in the Australian Capital Territory, OPC drafted a package of enabling legislation. Central to this was the *Australian Capital Territory (Self-Government) Act 1988* which provided the core legislative, executive and judicial powers for the new government. Continuing to represent the Commonwealth's interest in the planning and development of the capital, which by then had a population of over 270 000, the National Capital Authority was reconstituted under the *Australian Capital Territory (Planning and Land Management) Act 1988*. In conjunction with the Self-Government Act the *Australian Capital Territory (Electoral) Act 1988* guided the first election for the ACT Legislative Assembly, contested by more than 100 candidates on 4 March 1989. The Self-Government Act also established a separate ACT public service.

Transitional arrangements made under the *A.C.T. Self-Government (Consequential Provisions) Act 1988* operated for the first five years of self-government, during which the new service effectively remained a branch of the Australian Public Service. The head of the 'ACT Administration' had the powers of a Secretary under the *Public Service Act 1922*, while transferred staff retained Commonwealth employment rights and conditions. A further consequential provisions Act ended this arrangement in 1994 and

provided for some reciprocal mobility between the Commonwealth and territory public services. Until 30 June 1990 the Commonwealth retained responsibility for most ACT laws relating to the administration of justice and criminal law. Drafting challenges associated with the transfer of responsibilities to the new territory government were initially the province of the ACT Branch in the Commercial and Drafting Division of the Attorney-General's Department. Moved to the Commonwealth Department administering the ACT (and other Territories) prior to self-government, the Branch became the ACT Legislative Counsel's Office, later renamed the ACT Parliamentary Counsel's Office.

Reassessment

In June 1992 Attorney-General Michael Duffy asked the House of Representatives Standing Committee on Legal and Constitutional Affairs to conduct an inquiry into drafting. Initially chaired by Michael Lavarch, who was Attorney-General by the time the Committee reported in September 1993, the inquiry addressed wide-ranging matters pertaining to the quality of legislative and legal drafting in Australia. As well as the principles and practice of drafting, the style, format and accessibility of legislation and the training of drafters, the Committee considered strategies for improving policymaking and drafting instructions. Ian Turnbull and senior drafters provided a substantial submission and oral evidence to the inquiry. Presenting tangible evidence of innovations already made by OPC through reference to specific Bills, Turnbull cautioned that many witnesses were confusing volume with complexity. He also explained the difficulties of drafting simply when confronted by extreme time pressures – citing the examples of weekend drafting of a new kind of statutory lien over aircraft; the drafting of an extremely complicated Companies (Foreign Take-overs) Act within a week and the five months allotted to draft around 1200 pages of corporations legislation.

Attorney-General from 27 April 1992 to 11 March 1996, Michael Lavarch was Chairman of the House of Representatives Standing Committee on Legal and Constitutional Affairs which conducted an inquiry into drafting. The Committee's report, *Clearer Commonwealth Law*, was presented in September 1993.

[Photograph courtesy of the Parliamentary Library and Auspic]

Concluding in its report, *Clearer Commonwealth Law*, that there had been recent dramatic improvements in the quality of Commonwealth legislation, the Committee judged that more could still be done to make laws easier to understand and use. Recommending that legislative drafting remain a government monopoly, that the division between the two Commonwealth drafting offices should stay in place and that the need for increased resources in each agency should be assessed, the Committee directed some recommendations to policy development and drafting instructions. These included suggestions for changes to the *Legislation Handbook* and for improving the quality of instructions. The importance of consultation between drafters and policymakers was emphasised and more, regular training for instructors recommended.

Retiring on 30 June 1993, Ian Turnbull was succeeded as First Parliamentary Counsel by Hilary Penfold. Tom Reid was subsequently appointed Second Parliamentary Counsel. Eric Wright retired in March 1996 and Kerry Jones was appointed Second Parliamentary Counsel in his place. OPC's commitment to clearer drafting continued. Drafting Directions, critical to maintaining consistency across the statute book, were consolidated and updated during the election period early in 1993. That year the Office began a project to improve the design and layout of Bills, consulting a wide range of stakeholders and communications experts in the process.

Attention was also given to techniques for planning legislation. First Assistant Parliamentary Counsel Adrian van Wierst was the principal instigator of 'blueprint planning', developed in OPC in the early 1990s. Praised by Ian Turnbull during the drafting inquiry for transforming his style from extremely complex income tax drafts to prove that 'in the right circumstances' he could draft simple law, van Wierst first applied his system to a rewrite of sales tax legislation. The new technique involved deferring actual drafting of legislation until all policy details were resolved, to avoid problems where legislative structures chosen early in the process often needed to be adjusted to accommodate later substantial changes in policy. It required the drafter to work particularly closely with instructors to analyse and refine the policy approach. As this was clarified the policy was set out in a non-legislative 'outline' document, used as the vehicle for further consultation and refinement. Then left free to concentrate on the form of the Bill without continually having to adapt it to significantly altered policy, the drafter could, comparatively quickly, devise a final legislative approach with reasonable confidence. Presenting a session on blueprint planning in 1995 Adrian van Wierst described two of its challenges as 'fear' of not having a Bill, and getting others to accept the dramatic change from traditional drafting. Certainly conscious of colleagues who questioned his state of mind while undertaking the initial experiment, he may also have been aware of one of the fears of the Tax Office instructors. Although converted to the blueprint system they still worried that the drafter, with the legislative format all in his head, might have a nasty fall off his bicycle, his habitual mode of transport around town.

Blueprint planning the sales tax rewrite on OPC's first electronic whiteboard. A self confessed 'great fan' of these whiteboards, Adrian van Wierst pioneered their use in OPC. On them he transformed proposals and schemes into diagrams, often exposing problems which were not obvious in linear form. L-R: Drafter Adrian van Wierst with Australian Taxation Office instructors Gavin Back and John Harwood. Robert Garran Offices 5 November 1991. [OPC photograph]

Document testing sessions focusing on the importance of drafting for readability were conducted in OPC in the mid-1990s. Wary of approaches which might be unduly mechanistic or inflexible, drafting teams considered the applicability of various forms of document testing. Not directed at specific drafts, the sessions engendered a greater appreciation of readers' perceptions of legislation and provided insights for further development of techniques for structuring and ordering drafts. Communications consultant Tony Golsby-Smith who assisted with this project conducted another one investigating the use of diagrams in legislation. During a visit to North American drafting offices two senior drafters with particular expertise in information technology, Adrian van Wierst and Peter Quiggin, provided advice to a team working on the project in the post-graduate school of Communication Design and Planning at Carnegie Mellon University in Pittsburgh. Tom Reid also visited the school, in the course of a private trip to the United States. No automatic answers for improving legislation eventuated. Results of the project suggested that while use of good diagrams could help readers understand legislative text, more than drafting expertise was required to be able to produce the necessary standard of diagram. In succeeding years OPC adopted a more proactive approach to using appropriate diagrams in Bills, and as thinking tools in

planning drafts. The purpose, message and specific benefits of using diagrams in particular circumstances were assessed to determine whether the extensive time expended in their design would be justified by enhanced readability.

Adrian van Wierst demonstrating diagramming techniques (using balloon modelling) during a work trip to the USA and Canada. This group was studying the use of diagrams in legislation. Carnegie-Mellon University, Pittsburgh 1995. [OPC photograph]

Developing IT

From 1990 concerted efforts were made to develop OPC's information technology (IT) capabilities. After its initial unsuccessful foray into word processing in 1983, the Office had returned to the preparation of Bills on electric typewriters. Lagging behind other drafting offices and instructing agencies in its ability to prepare and produce documents, OPC reintroduced personal computers, purchasing four at the end of 1989. Intent on obtaining maximum benefit from this potentially powerful drafting resource, FPC Ian Turnbull began to assemble a team of people with the essential expertise. Senior drafter and chief proponent of IT, Adrian van Wierst was joined by Peter Quiggin at the end of January 1990. Recruited as an assistant drafter, Quiggin had tertiary qualifications not only in law but also in IT. Responsible for the acquisition and installation of computing equipment, the two drafters oversaw the production of the first Bill drafting system using 'WordPerfect 5.1', with Quiggin gradually taking on more substantial responsibility for OPC's IT system.

By April 1990 most Bills work was being done on a small computer network, linked to laser printers. Refinements to the word processing package in use enabled the innovative layouts required for legislation. Conventions for the use of bold and italic type were introduced, and formulae could more readily be incorporated into Bills. Both timeliness and quality of drafts improved markedly. Typesetting was still required for flow charts, diagrams and graphics, but some costs were reduced. From June 1991 Bills and amendments were provided directly to the Government Printer on 3½ inch diskettes – initially accompanied by a word processor printout as a point of reference. The WordPerfect files were converted to Interleaf by the Australian Government Publishing Service (AGPS), which also needed to incorporate all subsequent amendments in Bills.

Scrupulous attention was paid to occupational health and safety aspects within OPC. Quality ergonomic furniture and computer accessories were provided, eye tests arranged, advice on stress management and the prevention of occupational overuse symptoms given, and related publications procured for the library. Rest breaks were treated seriously, and drafters were cautioned not to stand over keyboard operators while waiting for urgent work to be done. Additional computers for use by drafters were provided from 1991, with the stipulation that the equipment was not to be touched until the necessary training was undertaken. All the lawyers had computers by early 1993 and were able to access legal databases maintained on the Attorney-General's Department mainframe computer. Information technology needs were continually reviewed and upgraded, and resource agreements for the enhancement of IT resources in OPC were made with the Department of Finance. An Information Technology Plan was put in place in 1991-1992. Set up to implement the Plan, an Information Technology Committee provided advice to First Parliamentary Counsel on major policy and purchasing decisions, and on alterations to the Plan.

Technology eliminated some of the most tedious and time-consuming work associated with drafting. In the mid-1990s all the Legal Assistants in the Office were trained to make ‘paste-ups’. Kept under constant review, the traditional system of providing up-to-date consolidations of Commonwealth Acts for internal Office use was replaced by electronic consolidations late in the decade. In 1996 OPC played a leading role in developing a common IT platform for use by the Office, the Parliament and the Attorney-General’s Department in preparing and processing Bills and consolidations of Acts. This ensured a smooth transition of legislative text from Bills through parliamentary passage to incorporation in the statute book; and allowed the agencies using the platform to share new IT tools to more efficiently prepare and process legislative material. From 1997-1998 drafters had access to electronic consolidated reprints of Commonwealth legislation (CONSOL) prepared by the Attorney-General’s Department, and to other consolidations prepared by commercial publishers. The ability, using ‘Folio’ software, to undertake electronic searches of consolidated

legislation and a rapidly increasing body of other relevant on-line material greatly expedited the drafting process. Updated daily, OPC's Folio Acts and Bills infobase made all existing and proposed legislation available for searching at the same time. Containing all office documents relevant to drafting, the Folio Office Documents infobase provided a structured way of retaining OPC's corporate knowledge in a way that was very accessible to all staff.

Training on the new computers – Robert Garran Offices 1990. L-R: Loraine Trewartha, Theresa Phillips, Myra Bentley, Nadia Spesyvy, Sheila O'Connor and Peter Quiggin. [OPC photograph]

More Management

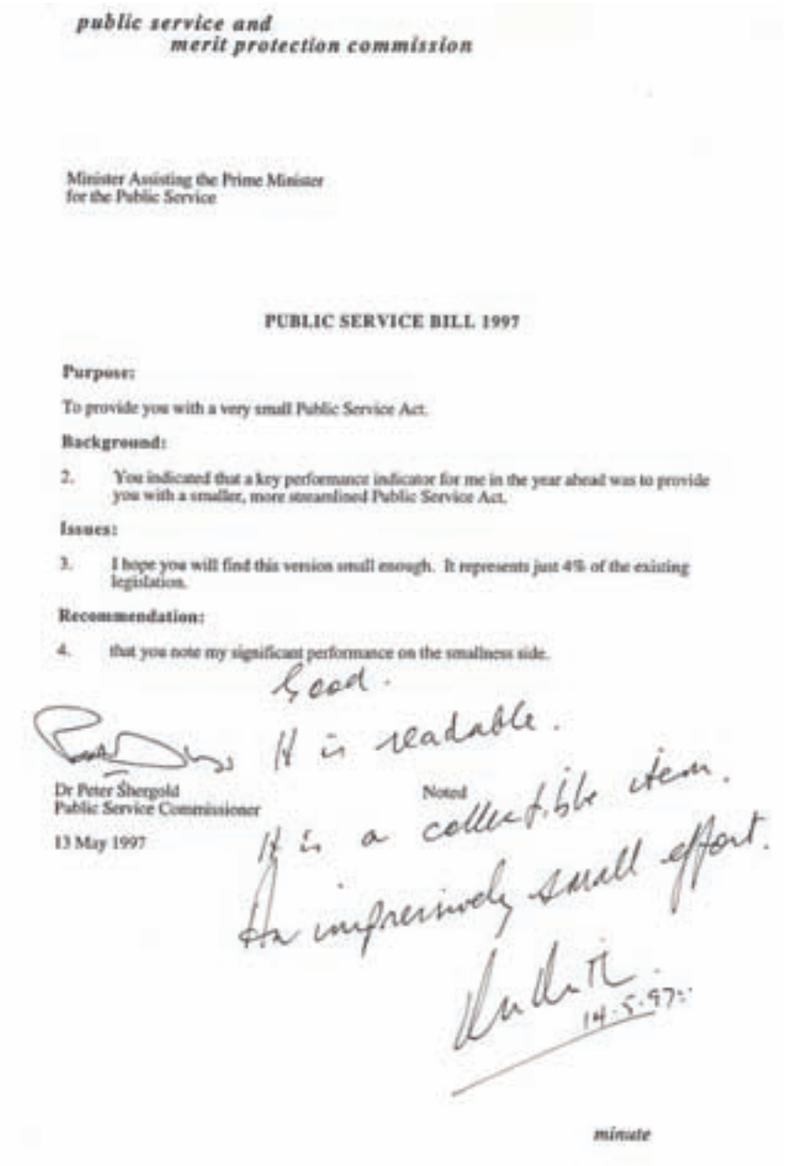
Legislative reform of the Australian Public Service impacted on both drafting workload and the management operations of OPC in the 1990s. After the 1987 abolition of the Public Service Board few further changes were made to the *Public Service Act 1922*, already amended more than 100 times. The *Public Service Legislation Amendment Act 1995* amended both the Public Service Act and the *Merit Protection (Australian Government Employees) Act 1984* to amalgamate the Public Service Commission and the Merit Protection and Review Agency, creating the Public Service and Merit Protection Commission (PSMPC). From 1996 drafting effort was focused on a replacement Public Service Act. In a climate of privatisation which changed statutory structures and reduced the size of the public sector, the new legislation was devolutionary. The *Public Service Act 1999* which came into effect on 5 December that

year removed central controls, transferred employment powers to agencies, and placed greater emphasis on accountability and protecting the public interest. Drafted by Adrian van Wierst, the Bill was also notable for its brevity and simplicity. A report by the Joint Committee on Public Accounts which considered the draft, recorded a comment by Dr Philippa Weeks, one of Australia's leading labour lawyers and an expert on public sector employment:

> *Not least of its virtues is the admirably direct and succinct statement of the essential characteristics of public service ... Praise is due ... to the drafters, who have produced a Bill which is almost breathtaking in its lucidity and simplicity.*

Management responsibilities under a range of Acts were actioned and reported on. Commonwealth agencies were subject to the occupational health, safety, rehabilitation and compensation obligations of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*; and the requirements of the *Disability Discrimination Act 1992*. The EEO Program continued to govern OPC's employment decisions until it was superseded by the broader Workplace Diversity Program from 1998-1999. More flexible working arrangements were made available to staff wishing to balance work and family responsibilities or to pursue personal interests. With little scope in such a small agency to implement the Commonwealth Access and Equity Strategy, OPC focused on furthering social justice and equity through its drafting of legislation. As appropriate, drafters raised related legal issues with the Attorney-General's Department, advised instructing agencies about legislative proposals which might attract adverse comment from the Senate Standing Committee for the Scrutiny of Bills, and continued efforts to improve the accessibility of legislation. Bills with significant social justice and equity implications included the Employment Services Bill 1994, the Supported Accommodation Assistance Bill 1994, the Human Rights (Sexual Conduct) Bill 1994, the Racial Hatred Bill 1994, the Human Rights Legislation Amendment Bill 1995 and the Sex Discrimination Amendment Bill 1995.

Under the ongoing Industrial Democracy Plan, regular meetings facilitated staff participation in decisions affecting their employment and working conditions. Committees convened for special purposes – on a standing or project-specific basis – dealt with issues such as occupational health and safety, management of the library and office furniture. From 1988, under an arrangement instigated by Ian Turnbull, one Second Parliamentary Counsel took primary responsibility for management of financial resources, the other for personnel issues. Reports of meetings of the 'Triad' (the three statutory officers) were circulated in the staff newsletter.



public service and
merit protection commission

Minister Assisting the Prime Minister
for the Public Service

PUBLIC SERVICE BILL 1997

Purpose:

To provide you with a very small Public Service Act.

Background:

2. You indicated that a key performance indicator for me in the year ahead was to provide you with a smaller, more streamlined Public Service Act.

Issues:

3. I hope you will find this version small enough. It represents just 4% of the existing legislation.

Recommendation:

4. that you note my significant performance on the smallness side.

Good.
It is readable.
It is a collectible item.
An impressively small effort.
14.5.97

Dr Peter Shergold
Public Service Commissioner

13 May 1997

Noted

minute

Drafting the Bill which would become the *Public Service Act 1999*, Adrian van Wierst was informed by the instructors that the Minister Assisting the Prime Minister for the Public Service, Peter Reith, wanted 'a little Act'. The drafter had a mock-up of the admirably brief Bill printed in a very small (A6 size) booklet for Public Service Commissioner Peter Shergold to present to the Minister. Delighted with the idea, the instructors reprinted multiple copies of the Act in the same size – the yellow covered booklet quickly became known as 'Little Buttercup'.

The ‘Triad’ at work. L-R: Second Parliamentary Counsel Eric Wright and Hilary Penfold with First Parliamentary Counsel Ian Turnbull. June 1993. [OPC photograph]

On 4 December 1992 OPC became an agency in its own right for agency bargaining purposes under section 134 of the *Industrial Relations Act 1988.* The Office was covered by generic enterprise agreements until it was able to negotiate its first certified agreement. Rejection by administrative staff of the first attempt at an agency agreement in 1994 heralded a particularly problematic period in workplace relations for the Office. Formal workplace bargaining negotiations were temporarily suspended. In 1997 an ad hoc committee was formed to manage the Work Environment Initiative (WEI). Intended to ascertain blocks to good teamwork and high morale within the Office, the WEI involved a series of focus group discussions facilitated by an outside consultant. All staff were invited to express their views and perceptions about the Office as a place to work, and to propose solutions to any identified problems. Various recommendations from the committee which reported on the process were implemented, or discussed in the context of workplace bargaining. OPC’s first certified agreement was put in place in April 1999, by then under section 170LK of the *Workplace Relations Act 1996*. Negotiations for subsequent agency agreements, and Australian Workplace Agreements with senior staff members, were characterised by high degrees of staff and management cooperation.

Extensive responsibilities were devolved from central coordinating agencies through a range of financial management legislation drafted late in the 1990s. The *Financial*

Management and Accountability Act 1997 (the FMA Act) gave agency heads greater responsibility in areas such as record keeping, fraud control and borrowing. Reporting and auditing requirements for Commonwealth authorities and standards of conduct were set out by the *Commonwealth Authorities and Companies Act 1997* (the CAC Act). Aiming for proper accountability, the *Auditor-General Act 1997* defined more precisely the wider-ranging powers of the Auditor-General, and strengthened the functional independence of the office. The *Charter of Budget Honesty Act 1998* provided for the publication of regular reports setting out fiscal strategy; an intergenerational report at least once every five years assessing the long-term sustainability of government policies; a pre-election economic and fiscal outlook report; and costing of election commitments. OPC developed risk and fraud control policies and operational plans. The Office moved to accrual budgeting in 1999-2000 and regularly reviewed performance outcomes in line with further financial management reforms. A decade later, following a comprehensive review of agencies' outcomes statements, reporting was changed from an 'outcome and outputs' to an 'outcome and programs' basis. In accordance with section 46 of the FMA Act, an Audit Committee for the Office was established in 1997. Originally consisting of two SES drafters with no day-to-day involvement in financial matters, the Committee gained an independent chair from 1 May 2002. The first of these was Maurie Kennedy who had been the Department of Finance instructor for the prolonged passage of the major legislative reforms effected by the FMA, CAC and Audit Acts. Kennedy resigned from the Audit Committee for health reasons in June 2007, and was succeeded as Chair by Kevin Patchell. A former senior taxation officer, Patchell had broad financial experience in both the private and public sectors, and long and distinguished involvement with the accountants' professional association, CPA Australia.

Office Communication

Communication within the Office was enhanced over time by the introduction of regular staff meetings at all levels. Monthly staff meetings and associated committee meetings continued. Additional committees were formed to consult and advise on staff development, IT, office communications and energy conservation as well as aspects of the drafting function. Various SES drafters were assigned management responsibility for occupational health and safety, EEO, security control, staff development or IT. Senior management meetings were held from mid-1998. Involving the statutory officers and SES drafters, these provided a forum to discuss the legislation program, drafting issues, management and administration of the Office and its relationship with other parts of government. Instigated in 1999-2000, fortnightly meetings of senior drafters with First Parliamentary Counsel related primarily to work progress and drafting issues, but also provided a forum for consultation on significant non-drafting issues – participants at the meeting conveying information to and from the other drafters. Monthly meetings of all drafters, focusing on drafting issues of general interest, were initiated in mid-2005.

Involvement of staff in the decision-making process was formalised by the establishment of a Workplace Consultative Committee (WCC), which first convened in June 1999. Meeting monthly and chaired by staff group representatives on a rotating basis, the WCC subsumed some of the issues previously dealt with by committees and heard regular reports from other standing committees.

The cover of the first issue of OPC's staff newsletter, which was circulated from late April 1989.

The Real Story

In August 1997 the roving reporter for *Bills and Papers*, McReuters (Iain McMillan) reported on an incident in the QANTAS Club lounge in Melbourne. Egged on by FPC Hilary Penfold and senior drafter John McKenzie, the then head of the ACT drafting office pushed the 'staff only' button on the coffee machine – causing hot liquid and steam to gush from various parts of the appliance.

> *It was cappuccinos all round (or more accurately, all over) at the Melbourne airport golden trough lounge when visiting LICE dignitaries, Hermione Penbend and Bjorn 'Buffalo Bill' McHensteeth, aided and abetted the pressing of the rather tempting 'staff only' button on the espresso machine. Being drafters, they know only too well that instructions often do not mean what they say, and one must question everything. So the button was pressed and a seemingly endless torrent of steam and scalding milk was released. Always cool in a crisis, Ms Penbend placed every available receptacle*[1] *under the jet, while Buffalo Bill was reduced to helplessness in the face of the general crisis and all the FREE WINE AND FOOD. Order was eventually restored by lounge officials, who are consulting Tiny Words-Smith about a more effective way of communicating the hazards of pressing the button.*

[1] Cups, briefcases, mobile phones, travelling executives, etc.

Cast (in order of appearance)

Stage name	**Real name**
Hermione Penbend	Hilary Penfold
Bjorn 'Buffalo Bill' McHensteeth	John McKenzie
Tiny Words-Smith	Tony Golsby-Smith [communications consultant]

As a supplement to Drafting Directions and Office Procedural Circulars (OPCs)[3] on operational matters of ongoing relevance, a staff newsletter was produced from 28 April 1989.[4] Early editors of 'the OPC news sheet', *Bills and Papers,* included its creator John McKenzie, followed by Dawn Ray (for six issues from number 43) and Pierre le Guen

[3] Numbered Office Procedural Circulars started on 27 June 1990.
[4] Issues of *Bills and Papers* were not dated until No. 48 of 11 May 1990.

who continued with the task until the end of June 1991, when Iain McMillan took over. Artwork for the original cover of the newsletter was designed by Paul Wan. *Bills and Papers* contained a wide variety of useful and entertaining material, much of which provided a light-hearted foil to the serious work of drafting. Notices relating to office events and staff activities; reminders about official instructions, office procedures and plain language practices; articles of interest; notes on relevant court decisions; items of personal news; poetry, quotations, puzzles, wordplay, trivia and cartoons were all included. One long-running and much anticipated feature of *Bills and Papers* first appeared on 15 February 1991. From the droll pen of Iain McMillan, 'The Real Story' recounted amusing anecdotes about unofficial working life in the 'Commonwealth Office for Writing Laws in Clear English' (LICE). Initially produced on a weekly basis, *Bills and Papers* was gradually superseded by electronic circulation of the type of material it contained. However, quarterly issues of the newsletter, produced by OPC's editorial area, remained popular more than 20 years after the publication of the first issue.

Supporting Drafting

Public service legislation, devolved management responsibilities and technology all prompted changes in OPC's corporate support arrangements. The section of support staff headed by the Legislation Officer was split into two in 1989 – one cell to deal with finance and personnel matters and the other responsible for printing and checking of Bills and the maintenance of paste-ups. While preliminary job redesign in December 1986 had resulted in wider distribution of some administrative and keyboard duties, comprehensive multi-skilling was implemented a decade later. In consultation with staff, the structures of both the legislation and administration sections were reviewed in 1995. A new arrangement to improve and rationalise the provision of support to drafters was trialled that year. Instead of personal assistants for senior officers, small multi-skilled service centres were set up. In the first service centre, named 'Smiths',[5] two executive assistants provided the full range of legal assistant services to a group of three senior drafters and their non-SES partners, and first level IT help-desk support to the whole office. Aiming for greater efficiency and opportunities for staff development, and more even workloads and equitable access to support staff, the experiment was so successful that two further service centres – 'Executive' and 'Dar-es-Salaam'[6] – were set up. Formal implementation of the restructure was completed in December 1997. Functions of the service centres evolved in subsequent years. Further flexibility in administration and enhanced career paths for support staff were aided by the broad-banding of non-drafting positions in 2002-2003.

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[5] Named after Smith's Potato Chips, marketed as 'The Original and the Best'.

[6] Meaning, in Arabic, 'Haven of Peace', the name was suggested by drafter Steve Reynolds as an indication of the type of work environment the service centre might help provide for the drafters.

Distributing 'Secret Santa' presents at one of OPC's memorable Christmas parties, the drafter Director of IT, Peter Quiggin, commended IT Officer Andrew Newbery for excellent work on the Office's computer system. Australian National University 1995. [OPC photograph]

Highly specialised, OPC's advanced and constantly expanding IT systems demanded more support than could be given by a drafter Director of IT with part-time assistance. The first full-time IT Officer, John Scott, was succeeded by Andrew Newbery in mid-1995, and an information and communications technology (ICT) team of three people was gradually built up to provide the prompt and professional maintenance and management of computer and telecommunications systems crucial to the effective production of Bills. Market-testing of OPC's technology and personnel services from 1999 resulted in decisions to maintain a dedicated ICT facility in-house while personnel processing and payroll activities were successfully outsourced to a private sector provider. The time-consuming burden of coordinating various management functions was removed from senior drafters' workloads early in February 2001 with the appointment of an SES-level General Manager. Glenyce Collins (later Francis), from the Parliamentary Business area of the Australian Taxation Office, joined OPC's Senior Management Team (SMT). Formed during 1999-2000 the SMT originally comprised the three statutory office holders, the drafter Director of IT and the Executive Officer.

Under the new General Manager, the backlog of administrative demands was despatched and a corporate services group tailor-made for a small agency was developed. Its components were the ICT team; a legislation section responsible for tasks relating to the checking and printing of Bills; minimal staff handling human resource, financial, property and security matters; and the three service centres providing proofreading, editorial and administrative support for drafters. In-house surveys conducted during this period recorded constant high levels of satisfaction with the exemplary support provided to the Office by the corporate services area. Staff surveys based on those collecting information for the Public Service Commissioner's 'State of

the Service' reports were conducted biennially from June 2006. These surveys captured a consistently high level of responses, which reflected both a positive collegiate approach on the part of staff and general satisfaction with the employment conditions offered by the Office. In the months before she retired in August 2009, Glenyce Francis handed over the reins as General Manager to Susan McNeilly, formerly of the Rural Industries Research and Development Corporation.

Celebrating a successful transition. L-R: General Manager Susan McNeilly with the inaugural occupant of the position, Glenyce Francis, at Glenyce's farewell function on 10 August 2009. [OPC photograph]

Established at the end of May 1989, the Staff Development Committee devised OPC's first formal strategy to increase development and training activities and to encourage staff to participate in them. Set up on an ongoing basis, the committee managed the Office's staff development budget, directed studies assistance, designed in-house training programs and approved attendance at relevant external courses. Designed to meet requirements under the *Training Guarantee (Administration) Act 1990*, the original Staff Development Plan was subjected to continual review and was completely rewritten during the election period in early 1996. Crucial to the development and retention of professional drafters, skilling of flexible service centres and assisting all staff to keep pace with advances in IT, training activities covered diverse subjects. Techniques for simplifying and improving the accessibility of legislation; developments in drafting style, constitutional law and statutory interpretation; changes to electronic publishing and technological training were all included. A rewrite of duty statements and selection criteria for drafting positions in 1997-1998 provided both a defined framework for recruitment and guidance for drafters in identifying development needs.

During 1999-2000 a database for storing and retrieving staff development information was developed. Revised arrangements for managing staff development were put in place from 2002-2003. A Director of Drafter Training was appointed, and was made jointly responsible with the General Manager for ensuring the provision of a properly focused, balanced and equitable training and development program for the Office. Vince Robinson, who had a particular interest in training and promoting the sharing of ideas in OPC**,** was the first Director appointed, continuing with this work after he became Second Parliamentary Counsel in 2004. Rebecca Considine subsequently acted

as Director of Drafter Training, until she went on maternity leave at the beginning of 2008. Iain McMillan took on the role after he was appointed Second Parliamentary Counsel in March 2009. Individual development plans for staff were incorporated in performance management plans, strengthening the involvement of staff and their supervisors in development decisions.

Legal Ink

Over the years a tradition developed of OPC editors using green ink. Looking for all types of errors – including formatting, language use, punctuation, grammar and spelling – while checking a Bill or PAM, editors marked up errors and suggestions as either green pen or pencil errors. Drafters were obliged to address green pen errors, which constituted breaches of OPC's style and formatting guidelines, and to consider suggestions or queries marked in pencil. Any drafter not wishing to make a green pen change needed to raise the matter with the editorial team, or First Parliamentary Counsel. The number of green pen errors in a drafter's work could be taken into account in managing his or her performance. Green ink became the exclusive domain of the editors. At the end of their 'designated checker' training, newly qualified editors were ceremonially presented with a green pen at a small celebration within the Office.

As FPC, Hilary Penfold used her distinctive signature colour, purple, to record her comments on papers or to give directions to staff. On the one occasion when her purple pen ran out of ink and she wrote in black, her comments and requests were momentarily ignored by recipients who did not immediately recognise her writing.

Recruitment and Retention

Recruitment of essential drafting resources demanded continued attention. Successive governments were generally willing to supply the necessary financial resources to prepare at least high priority legislation, but the challenge was to expand the pool of trained drafters within often unrealistically short time frames. Workforce planning was complex. Substantial time was required to train a drafter to draft Bills competently. OPC needed a recruitment approach targeting high quality lawyers, a training program which would develop drafting capability in the shortest possible time and retention strategies which would ensure the provision of satisfying work, career opportunities, attractive employment conditions and commensurate remuneration. The intensive investment of time and resources involved in developing independent drafting competence could be justified only if drafters who reached that standard were retained for at least another five to seven years. Trained drafters who left to

pursue other careers were unlikely to return. At most, academic courses in legislative drafting offered by some tertiary institutions provided a useful foundation for the only comprehensive training which was available, in working drafting offices. The long-term shortage of trained drafters was not confined to the Commonwealth office, or to Australia, leaving virtually no capacity for resource sharing between parliamentary drafting offices in times of high demand.

All these constraints were taken into account as OPC developed new recruitment strategies during the 1990s. Initially reviving a practice of working with the Attorney-General's Department to recruit law graduates to undertake work rotations in various areas during a 12-month probation period, OPC moved to more specific recruitment from the time Hilary Penfold was appointed as First Parliamentary Counsel in 1993. Advertising campaigns were developed to target highly intelligent people with analytical and problem-solving abilities, and enthusiasm for learning new skills. Relevant promotional material was widely distributed. University law schools were encouraged to promote the option of drafting as a career. More active marketing was undertaken in legal professional circles. The Office's commitment to planned, regular recruitment of high quality lawyers was emphasised at all levels. Participation by the First and Second Parliamentary Counsel in selection panels for base-grade drafters (at Assistant Parliamentary Counsel Grade 1 level) sent a strong message about the importance of recruitment. Persistent attention to recruitment and retention strategies over more than a decade paid dividends, with notable improvements in the number and quality of applicants and more stable retention rates. Continuing vigilance was maintained to build up a sufficient corps of senior drafters. Through the 1990s and early 2000s several consultant drafters were engaged to alleviate problems caused by a dearth of more experienced staff. Retired senior drafters Geoff Harders, Geoff Kolts, John McKenzie, Kerry Jones and Steve Reynolds returned to work in OPC for varying periods on a contract basis.

Among retention strategies developed by the Office late in the 1990s was an enhanced salary structure giving greater recognition to experienced drafters wishing to focus on drafting work rather than pursuing promotions involving increased management responsibilities. Family-friendly employment policies attracted a greater number of female drafters. By the turn of the century, as well as a female First Parliamentary Counsel, women were equally represented in the junior ranks of drafters, although there was only one, Camilla Webster, at SES level.[7] A significant difference to the gender balance among senior staff was made in 2001 when three female drafters recruited

[7] Camilla Webster joined OPC from the Victorian State Law Department in June 1985. Promoted to SES Band 1 on 17 January 1991 she had two extended periods away from drafting (living overseas from 1992-1995 and 2001-2004) before she resigned in June 2004.

since 1993 (Marina Farnan, Louise Finucane and Simone Collins) were promoted to SES positions and a fourth (Toni Walsh) was directed to act at SES level on a long-term basis. By 1 January 2011, of the 32 drafters in OPC 18 were women, well represented at all levels. OPC's flexibility in workforce planning was tested to the limit in 2008-2009 when six members of staff including five drafters – approximately 16 per cent of the total drafting contingent – proceeded on maternity leave at various stages of the year. In July 2010, OPC was accredited by the Australian Breastfeeding Association as a 'Breastfeeding Friendly Workplace'. Aiming to make it somewhat easier for new mothers to return to work, the assessment and certification process was instigated by drafter Naomi Carde, on her return from maternity leave in April 2009.

Drafters Michelle Fletcher and Paul Millington featured in recruitment material designed in 2004. [OPC photograph]

Working Smarter

Traditional methods of on-the-job training remained central to development of drafting skills. Adjustments were made to the 'pairs' system during the 1990s. In response to some dissatisfaction with the established practice of pairing senior and assistant

drafters to work together for long periods, Ian Turnbull implemented a system of more flexible partnerships. Pairs were sometimes constituted for single drafting projects, and non-SES drafters with appropriate experience were given opportunities to lead teams. While this enabled assistant drafters to experience more drafting styles and to gain some supervisory experience, the uncertainty of pairings was felt to disrupt work patterns and to dilute the intensity of training. A survey of drafter working arrangements conducted after Hilary Penfold became First Parliamentary Counsel indicated concerns that the revised arrangements were detrimental to both the efficiency and quality of drafting work. Commitment to training was believed to have suffered, with fewer learning opportunities for assistant drafters and less mentoring experience for seniors. As a result, a modified version of the traditional pairs system was introduced. Senior and assistant drafters were again paired for longer periods, with emphasis placed on the training role of mentors. More attention was given to providing opportunities to junior drafters, based on their individual skills and experience. Greater sophistication in contingency planning ensured that OPC's operations would not be seriously affected by the absence of individual drafting staff. Some larger drafting teams were created, with three or four drafters working together on major projects. From later in the decade, several teams were assigned on occasion to work together to prepare single Bills which demanded especially complex and urgent drafting.

Always economical with the number of drafters employed, OPC focused on developing effective work methods which would ensure that Bills were drafted in accordance with government priorities. Under procedures initiated by the incoming Labor government in 1983 and adopted by successive governments, the legislation and parliamentary business program was managed by the Parliamentary Business Committee of the Cabinet (PBC), which allocated priorities to legislation proposals put forward by Ministers. Until its abolition in December 1992, the Legislation Committee of Cabinet continued to examine draft legislation and clear Bills for introduction into the Parliament. The Legislation Committee was replaced by the Legislation Approval Process (LAP) which consisted of a single Minister or Parliamentary Secretary clearing Bills for introduction.

Accountable to the PBC for the allocation of drafting resources, First Parliamentary Counsel Hilary Penfold worked with the Committee to develop a system of categorising Bills according to their programming priority. Quickly becoming fundamental to the ongoing work of the Office, the system involved dividing the legislation planned for a parliamentary sittings into four categories. Category 'T' (time-critical) was assigned to Bills intended to be introduced and passed in a single parliamentary sittings. Other Bills were assigned categories 'A', 'B' or 'C' in order of importance – Category 'A' referring to those generally intended for introduction but not passage. From its creation at the end of 1993, the priority system was applied strictly in managing drafting resources. Rare exceptions were made only where greater efficiencies might be achieved, for instance

by deferring the drafting of a particular Bill until a drafter expert in the relevant field was available to work on it. Usually assigned several Bills of different categories at once, drafters worked on lower category Bills during any lulls in higher category work – for example while waiting for clients to provide instructions or consider a first draft. A consistent challenge in programming continued to be delays in getting instructions for some Bills – especially after the priority system was implemented and some sponsoring Ministers or agencies abandoned or curbed work on Bills in the lower categories.

The OPC team which competed in the 1995 Post-Budget Fun Run was awarded a prize for their balloon hats. [OPC photograph]

Bills Plus

Not only the customary drafting of Bills contributed to OPC's demanding workload. From 1989-1990 the Office kept statistics of the number and type of parliamentary amendments[8] (PAMs) drafted. With trends hard to predict, the total fluctuated in some

[8] Amendments to be moved in Parliament to change the text of a Bill.

years but continued to rise, and the proportion of amendments to effect changes in policy remained far higher than that needed to make any drafting corrections. These generally related to small issues (such as cross-referencing) in the substance of a Bill rather than to errors that should have been fixed during editorial checking. A growing preference among clients for exposing draft legislation for public scrutiny before introduction into Parliament also impacted on drafting resources. Most common with taxation legislation – especially after the adoption in 2002 of Board of Taxation recommendations on consultation in the tax area – exposure drafts were more frequently required on subjects such as bankruptcy, corporations law, family law, insurance, superannuation, telecommunications and environmental issues. Extra work for drafters also resulted from preparing Bills for consultation, making changes to take account of comments received, and producing some exposure drafts which ultimately were not introduced.

Legislation stocktakes and omnibus Bills also absorbed drafting resources. In 1987 it was decided that Statute Law Revision (Miscellaneous Provisions) Bills were no longer a quick and effective way of making minor and technical amendments to Commonwealth Acts. As well as concerns that contentious matters may have been included in some Statute Law Revision Bills, there were problems with the sheer size of the documents. The Attorney-General's Department needed to expend considerable resources coordinating input from other agencies to prepare associated explanatory memoranda and second reading speeches. Other departments which did not have direct responsibility for the Bills were inclined to give them less attention, and Shadow Attorney-General Peter Reith described them in Parliament as 'slump' Bills which took up too much parliamentary time with a great deal of technical detail.[9] Abolition of the Miscellaneous Provisions Bills meant that these amendments needed to be made by other means. Since 1981 some agencies had been using omnibus Bills for all proposed amendments of portfolio legislation. Other agencies developed portfolio omnibus Bills to legislate for all but major new policy proposals, sensitive issues or imposition of taxes. Parliamentary Counsel was empowered to close off omnibus Bills that got too large for easy printing, or that were affected by deadlines early in the parliamentary sittings. The Law and Justice Legislation Amendment Bill (LAJLAB) became the omnibus Bill for the Attorney-General's Department.

OPC itself used Statute Law Revision Bills for regular cleaning up of the statute book – making minor technical corrections, repealing spent Acts and making other changes to improve the quality of legislative text and facilitate publication of consolidated versions of Acts. The *Statute Law Revision Act 1996* amended or repealed over 250 Acts. Drafted

[9] Australia, House of Representatives, *Debates* vol. H. of R. 160, p. 2028.

as a 'caretaker period'[10] project in 1998, the *Statute Stocktake Act 1999* repealed around 100 redundant principal Acts. Amendments relating to the ongoing process, commenced in 1984, of removing gender-specific language from legislation were included in Statute Law Revision Bills. The *Statute Law Revision Act 2008* included 514 such amendments, relating to 88 Acts. From the time Peter Quiggin became FPC in 2004, activities during caretaker periods were planned well in advance. Many practical projects relating to the updating, maintenance or expansion of drafting tools and systems were carried out during these weeks when normal drafting demands were substantially reduced.

Drafting Conferences

In August 1995 the Commonwealth Office of Parliamentary Counsel hosted a very successful conference to celebrate the twenty-fifth anniversary of its establishment. The event, entitled 'Getting Our Act Together: Best Practice in Legislative Drafting', attracted more than 130 legislative drafters from Australia and New Zealand. Sir Christopher Jenkins, First Parliamentary Counsel of the United Kingdom attended, as did a Canadian drafter working in New Zealand at the time. Almost all the OPC drafters participated, several presenting conference papers. Former First Parliamentary Counsel Charles Comans, Geoff Kolts and Ian Turnbull attended the conference dinner. Devoted to matters of direct interest to legislative drafters and those managing drafting offices, topics covered drafting techniques, readability of documents, consolidation of legislation, information technology and relations with Parliament and clients.

This was not the first drafting conference held in Canberra. OPC also hosted the inaugural one at Parliament House in July 1992. Organised by the Parliamentary Counsel's Committee, and attended by the heads and members of all Australian and New Zealand drafting offices, the 1992 meeting was the first in a series later described as Australasian Drafting Conferences. The lively debate and useful opportunities to liaise with other experienced drafters engendered at the Canberra conferences continued at meetings in Wellington, New Zealand, in 2000, in Melbourne in 2003, in Sydney in 2005, in Brisbane in 2008 and in Adelaide in 2011. First Parliamentary Counsel continued to be actively involved in the Parliamentary Counsel's Committee, and in drafting work on cooperative Commonwealth, State, Territory and trans-Tasman legislative schemes. The third edition of the PCC Protocol on Drafting National Uniform Legislation was released in July 2008.

[10] The time between the announcement of an election and the settling in of a new government.

Power and Responsibility

OPC's 25th Anniversary Conference in 1995 was opened by Justice Mary Finn, of the Family Court of Australia. Her previous work included 10 years in the Attorney-General's Department, where one of her earliest projects was to instruct on a Family Law Amendment Bill being drafted by Hilary Penfold. Describing this as her first introduction to a drafter, in a professional sense, Finn J said it had helped her see 'the real potential that drafters have to exercise influence, for good or for bad'. She made some interesting observations about drafters' responsibilities:

> *I do not think that it is perhaps recognised as widely as it should be, that real power in our legal and political system does lie with the parliamentary or legislative drafters. I know that you as drafters used to, and probably still do, try to perpetuate the myth that you only draft, and that policy remains a matter for others. But the truth is of course that it is not what you say, but how you say it! Thus in the end legislative ideas will only work according to how they are in fact expressed in the statute book. Therefore it has to be recognised, in my view, that you have a great responsibility and a great deal of power.*

One particularly significant offshoot from the 1995 drafting conference in Canberra was the formation of the Parliamentary Counsel's Committee Information Technology Forum. Regular meetings of the IT Forum, attended by representatives of all Australian and New Zealand drafting offices, provided the opportunity to discuss common issues related to IT. These included electronic publication of legislation, strategic planning for IT and use of the internet, computer-based research tools, teleworking and remote access to office networks. As well as gaining access to a network of people with similar interests and problems, OPC provided much assistance to drafting offices of other jurisdictions, sharing ideas and approaches to information technology and more generally. In August 1997 the Director of IT, Peter Quiggin, visited the Western Australian Parliamentary Counsel's Office to discuss the upgrading of their computer network and Bills production system. This assistance was reciprocated when the Western Australian Office helped with the next upgrade of OPC's system. Other drafting offices sent staff to Canberra to study OPC's computer systems. In 2007 and again in 2010 the Office's IT staff provided assistance to the Northern Territory Office of the Parliamentary Counsel, developing and installing modified versions of templates used by the Commonwealth for producing Bills. With the IT Forum settling into a program of convening annually in rotating locations, Peter Quiggin claimed the distinction of being the only member to attend every single meeting during the first fifteen years of the Forum's existence.

OPC drafters were among participants and presenters at the PCC's Fifth Australasian Drafting Conference, held in the Parliamentary Annexe, Parliament House, Brisbane in July 2008. [Photograph courtesy of the Office of the Queensland Parliamentary Counsel]

OPC International

Interaction with overseas drafting offices became both more common and more significant late in the twentieth century. Customary correspondence and telephone communication between heads of drafting offices were complemented by more frequent overseas visits between Parliamentary Counsel, and the attendance of drafters at international drafting conferences. OPC drafters invited to present papers made numerous well-received presentations on various aspects of legislative drafting to international gatherings. Australian drafters maintained whole-hearted involvement in the Commonwealth Association of Legislative Counsel (CALC) which, after its formation in 1983, continued to meet in conjunction with each Commonwealth Law Conference. Committed to facilitating communication and discussion between drafters around the world, OPC took on the hosting of the CALC website from 28 February 2000. An online forum was set up on the website in 2009, to supplement the CALC newsletters and the Association's journal, *The Loophole*.

The OPC contingent at a tax drafting conference in Auckland New Zealand, November 1996. L-R: Jonathan Woodger, Bevan Murray, Tom Reid, Zoe Copley, Louise Finucane, Peter Quiggin, Stephen Mattingley and Simone Collins. Organised by New Zealand's Internal Revenue Department, the conference was attended by delegates from many Commonwealth jurisdictions. [OPC photograph]

Hilary Penfold served as President of CALC from 1999 to 2003 and organised the CALC Conference held in Melbourne from 15 to 17 April 2003. Her successor as FPC, Peter Quiggin, was elected as the Pacific region representative on the CALC Council at the Hong Kong conference in April 2009. At the conference in Hyderabad, India in February 2011 he was elected President of CALC for a two-year term. Prior to the Hyderabad meeting, OPC drafters Nick Horn and Lauren Brennan carried out a literature survey of CALC publications. The annotated bibliography they prepared was included in a special issue of *The Loophole*, commemorating the 75th birthday of CALC's long-serving Secretary, Dr Duncan Berry.

L-R: Incoming CALC President Peter Quiggin with former President Eamonn Moran. CALC Conference in Hyderabad, India, February 2011. [CALC photograph]

At the CALC conference in Hong Kong, April 2009. OPC drafter Anne Treleaven (right) with drafter colleagues from other Commonwealth countries. [CALC photograph]

Officials from many overseas countries – including Bangladesh, Bhutan, Canada, China, Fiji, Indonesia, Ireland, the Marshall Islands, Nepal, New Zealand, Pakistan, Papua New Guinea, the Philippines, Singapore, South Africa, Thailand, the United Kingdom and Vanuatu – visited OPC at various times to discuss aspects of legislation and drafting approaches. After the Legislative Drafting Institute was abolished at the end of 1981, OPC at different times provided intensive on-the-job training to drafters from other countries, including Bangladesh, Mauritius, Nigeria and Zimbabwe. In March 2005 FPC Peter Quiggin visited Brunei Darussalam as the guest of the Government of Brunei. He met with the Attorney-General of Brunei and presented seminars to staff of his Chambers on the establishment and running of a drafting office, and on plain-language drafting. In 2008 IT Director Andrew Newbery was sent to the drafting office in Vanuatu for a week, to develop and install modified versions of OPC templates for producing Bills.

OPC continued to benefit from six-month exchanges of staff with legislative drafting offices in other Commonwealth countries. In 2003 Michelle Fletcher went to the drafting office in British Columbia while OPC welcomed Canadian drafter Janet Erasmus. Stephen Mattingley worked in the New Zealand Parliamentary Counsel Office in Wellington during 2005, on exchange with Jacqueline Derby. In 2009 OPC's Toni Walsh went to Edinburgh for an exchange with Willie Ferrie from the Office of the Scottish Parliamentary Counsel. Louise Finucane changed places with Douglas Hall of the United Kingdom Office of Parliamentary Counsel in London in 2010. A three-month exchange between OPC drafter Sally Beasley and Elaine Ng, from the Law Drafting Division of the Hong Kong Department of Justice, took place in early 2011.

Exchange families. L-R: Front Janet Erasmus of the British Columbia Office of Legislative Counsel and OPC's Michelle Fletcher, with (back) Janet's son, Lars Yunker, and husband, Mark Yunker, and Michelle's husband, Karl Alderson. Frequently an instructor for Bills, Karl continued to work (part-time) for the Attorney-General's Department during Michelle's exchange. [Photograph courtesy of Janet Erasmus]

OPC drafter Stephen Mattingley on exchange in Wellington, New Zealand, April 2005. [Photograph courtesy of the New Zealand Parliamentary Counsel Office]

Exchange drafter from New Zealand, Jacqueline Derby, at the OPC picnic held to farewell Second Parliamentary Counsel Kerry Jones in 2005. [OPC photograph]

Given a warm welcome by the Office of the Scottish Parliamentary Counsel, OPC drafter Toni Walsh also experienced the chill of an Edinburgh winter. [Photograph courtesy of Madeleine Mackenzie, OSPC]

L-R: Scottish exchange drafter Willie Ferrie, Second Parliamentary Counsel Marina Farnan and First Parliamentary Counsel Peter Quiggin. MTA House 2009. [OPC photograph]

Exchange drafter from the United Kingdom, Douglas Hall, enjoyed a weekend visit to Sydney in August 2010. [Photograph courtesy of Douglas Hall]

OPC drafter Louise Finucane on exchange at the UK Office of Parliamentary Counsel. Whitehall, London, October 2010. [Photograph courtesy of Marina Farnan]

As well as learning the intricacies of drafting in the Hong Kong Department of Justice, OPC drafter Sally Beasley tried her hand at paper-cutting in preparation for Chinese New Year. February 2011. [Photograph courtesy of the Law Drafting Division, Hong Kong Department of Justice]

R-L: Exchange drafter from Hong Kong, Elaine Ng, visited Parliament House in Canberra with OPC drafter Olivia Gossip. February 2011. [Photograph courtesy of Elaine Ng]

Continuing Reform

Government review of various aspects of legislation was prevalent in the early 1990s. Ongoing scrutiny of the legal policy aspects of Bills was carried out by the Senate Standing Committee for the Scrutiny of Bills.[11] Several contemporary reports and inquiries considered or impacted on aspects of drafting. In August 1993 the Second Report on the Cost of Justice by the Senate Standing Committee on Legal and Constitutional Affairs, *Checks and Imbalances*, contained a chapter dealing with legislation and the contribution of legislative drafting approaches to the costs of justice and to other costs to the community. The Legal and Constitutional Affairs Committee also considered the constitutional validity of the Taxation (Deficit Reduction) Bill 1993, and examined the impact on consideration of legislation of the practice of drafting taxation amendment Bills encompassing several different Acts. Following the Committee's report in September 1993, the Bill was divided into eight separate Bills which were introduced into the Parliament that month. Two of the new Bills were examined by the Committee, which recommended their passage as introduced.

Drafting of tax legislation was also considered by the Joint Committee of Public Accounts, which presented its report on an inquiry into the Australian Taxation Office, *An Assessment of Tax*, in November 1993. In the course of wide-ranging deliberation on numerous issues, the Access to Justice Advisory Committee examined both the *Checks and Imbalances* and *Clearer Commonwealth Law* reports. Several recommendations in the Committee's *Access to Justice* Action Plan in May 1994 were aimed at improving the quality and accessibility of legislation. In the same month the House of Representatives Standing Committee on Legal and Constitutional Affairs, in *Law Reform – the Challenge Continues*, reported on its inquiry into the role and function of the Australian Law Reform Commission. The House of Representatives Committee also considered the policy and the drafting of the Crimes (Child Sex Tourism) Amendment Bill 1994, and in May that year recommended redrafting of the Bill to give effect to a number of suggested policy changes.

[11] Established by resolution of the Senate on 19 November 1981.

Drafters Iain McMillan and Marjorie Todd examining a legislative scheme. Robert Garran Offices circa 1991. [OPC photograph]

Progressive reform of the *Bankruptcy Act 1966* through a series of amending Bills was interrupted by the need to deal with one particularly high profile financial failure in the early 1990s. Many corporate empires of intangible value, built in the fluctuating economy of the 1980s, were hard hit by a disastrous share market crash in October 1987 and the severe recession which followed. Among the many Australian entrepreneurs who went bankrupt was Christopher Skase, head of a tourism and media empire created on unstable foundations. Proving particularly adept at using the existing bankruptcy laws to suit himself, Skase attracted considerable unfavourable media attention by orchestrating a carefully prepared move overseas and delaying legal proceedings brought against him for as long as he could. Public outcry against his defection and avoidance tactics convinced the government of the need for urgent amendment of aspects of the legislation. Drafted in six months by consultant drafter Geoff Kolts, instructed by insolvency policy officer Mark Zanker, the 84-page Bankruptcy Amendment Bill of 1991 embodied the most substantial reforms to the bankruptcy laws since the 1966 Act. New provisions included tightened controls on overseas travel of bankrupts, more punitive measures for non-cooperation, a mandatory income contribution scheme and greater coercive powers for bankruptcy officials.

With prompt passage of the amendments essential to enable consequent extensive changes to subordinate legislation, the Bankruptcy Bill 1991 was passed in memorable circumstances. Debate commenced in the Senate at 11.45 pm on the last night of

Parliamentary sittings. While the end of year party at Parliament House was in progress, those in the chambers were preoccupied by an imminent change of Prime Minister – Bob Hawke having been deposed by Paul Keating as leader of the Labor Party some hours before. Small amendments made in the Senate meant that numerous copies of the Bill needed to be rapidly but faultlessly marked-up by hand, by Mark Zanker assisting the parliamentary staff. Attorney-General Michael Duffy managed to prolong debate on other matters long enough for the Bill to be transmitted to the House of Representatives before it adjourned. After the Attorney's notably short second reading speech, debate on the Bill commenced at 1.47 am. The very last Act of the Hawke government, the *Bankruptcy Act 1991* was passed at 2.44 am on Friday 20 December 1991. Assented to on 17 January, it came into effect on 1 July 1992 but required further amendment the following year to preserve its integrity in the wake of a High Court challenge from the still absent Skase.

Arguably the most significant reform in the history of bankruptcy law was achieved through an even more complex Bankruptcy Bill first introduced in March 1995. Described by the Senate Legal and Constitutional Legislation Committee as 'a disciplined attempt to clarify and reform a complicated area of the law' the Bill survived a change of government, and was ultimately passed as the *Bankruptcy Legislation Amendment Act 1996*. This Act radically reformed personal insolvency administration, severing traditional ties with the courts. Continuing amendments to bankruptcy legislation, many of them substantial, helped to keep drafters occupied in subsequent years.

Simplifying Corporations Law

Corporations law presented ongoing challenges for drafters. In April 1987 the Senate Standing Committee on Constitutional and Legal Affairs examining the cooperative scheme of uniform and complementary companies and securities legislation reported that it had outlived its usefulness. The Committee recommended that the scheme be replaced by a single Commonwealth regime. Drafters tasked with rewriting the federal law wanted to recreate it in plain language. However, an extremely tight timetable, which despite the pleadings of FPC Ian Turnbull proved non-negotiable, made comprehensive simplification of drafting style and formatting impossible. Instead, drafters produced around 1200 pages of corporations legislation, with the accompanying Australian Securities Commission Bill, in five months. The four-volume, 982 page Corporations Bill 1988 was by far the longest Bill ever to have been introduced into Federal Parliament. Eventually passed in 1989, the Corporations Act was never proclaimed to take effect, in anticipation of a constitutional challenge from one or

more states. The High Court subsequently determined in *NSW v Commonwealth*[12] that the Commonwealth had no legislative power to provide for the incorporation of trading or financial corporations – as distinct from regulating the activities of such corporations once they were created. With one dissenter, the judges reverted to the 1909 findings in *Huddart Parker*.

Negotiations for a replacement national regulatory regime based on cooperative legislation were given momentum by the contemporaneous failure of several large companies, the winding-up of which required detailed investigation. It was agreed that uniform legislation would be prepared, based on the *Corporations Act 1989* and *Australian Securities Commission Act 1989*, with amendments to make them suitable for application by legislatures in the States and the Northern Territory. Recasting the Commonwealth Acts as a federal scheme based on State legislative powers involved a further enormous volume of drafting, again done within a tight timeframe. The *Corporations Legislation Amendment Act 1990* changed the constitutional basis of its predecessor, much of which was later repealed. All States and the Northern Territory introduced statutes to apply the federal legislation passed for the Australian Capital Territory to: regulate companies; grant national regulatory powers to the Australian Securities Commission; and cross-vest relevant jurisdiction between Federal, State and Territory courts. In force by 1 January 1991, the cooperative national scheme remained in place until it was dismantled by High Court decisions in 1999 and 2000.

Simplification of the corporations law remained on the agenda. Providing examples of recent drafting to show what drafters could achieve given clear policy directions and sufficient time to draft simpler law, Ian Turnbull persuaded the Lavarch Committee in 1992 to lend its support to measures which would aid simplification on a wider scale. In October 1993 then Attorney-General Michael Lavarch established a task force to rewrite the corporations law in plainer language. First Assistant Parliamentary Counsel Vince Robinson was appointed as a member of the Corporations Task Force, which was assisted by the Corporations Law Simplification Unit (CLSU) staffed by departmental officers, and a consultative group representing private sector interests. Several other OPC drafters worked in the CLSU during the course of the project, including Michelle Fletcher, Roger Jacobs, Daniel Lovric, Iain McMillan, Anne Treleaven and Marjorie Todd. As well as readability, the CLSU drafting team paid increasing attention to the 'useability' of legislation – focusing on not only how simple the law might be to read or comprehend, but also on how easy it would be for government to administer and the public to comply with.

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[12] *New South Wales v Commonwealth* [1990] HCA 2; (1990) 169 CLR 482. The case was also brought by South Australia and Western Australia.

Introduced in December 1994, the *First Corporate Law Simplification Act 1995* was passed in September 1995. Released as an exposure draft, a second Simplification Bill was delayed by the federal election and change of government in March 1996. After the election, responsibility for the task force, along with other business law parts of the Attorney-General's Department, was transferred to the Treasury. In March 1997 the Treasurer launched the Corporate Law Economic Reform Program (CLERP) to give a new economic focus to wide-ranging aspects of Australia's corporations law. This Program subsumed the task of simplifying the corporations law. The drafting team working on the rewrite was seconded to the Treasury to work on a broad range of corporations law amendments. As well as drafting for the CLERP project, the team was involved in Treasury portfolio legislation and contributed to the preparation of other financial sector reform Bills. To gain a better understanding of the economic impacts of corporate regulation, both the instructors and the drafters working on CLERP attended intensive economics classes on Friday afternoons over some months. While this activity certainly added to the research and reading workload associated with the project, its objective was achieved.

OPC Staff at MTA House in 1995. [OPC photograph]

Tax Law Improvement

Taxation legislation – the most complex, voluminous and criticised of all – was subjected to an intensive simplification campaign around the same time. In November 1992 Ian Turnbull told the Lavarch Committee that income tax drafters had an extraordinarily hard job, 'condemned to build' on an 'horrendously complicated mishmash of amendments'. Demonstrating some improvements in Australian tax laws by way of contrast with denser legislation of several other countries, he still acknowledged that 'nobody' supported the present state of the Income Tax Assessment Act. Two months after the commencement of the corporations law simplification exercise, the Treasurer announced the establishment of the Tax Law Improvement Project (TLIP). An ambitious program to rewrite taxation law with a better structure and to make it easier to understand, TLIP was initially a three year project, funded from 1 July 1994. Its focus was on improvements to the existing law, not on reviewing the policy behind it. TLIP was headed by former Second Commissioner of Taxation, Brian Nolan.

Second Parliamentary Counsel Tom Reid was assigned to lead the TLIP drafting team, with other outposted drafters working on the project for various periods over the next five years. Drafters Kathryn Cole, Simone Collins, Zoe Copley, Louise Finucane, Stephen Mattingley, Bevan Murray, Sandra Power,[13] Paul Wan and Jonathan Woodger all spent some time with TLIP. Also involved from very early in the project, former Second Parliamentary Counsel Geoff Harders drafted many of the major rewrites, with assistance from the OPC drafters. Large parts of the *Income Tax Assessment Act 1936* were rewritten in a new style and placed in a new Act, the *Income Tax Assessment Act 1997.* The Tax Law Improvement (Substantiation) Bill, introduced in December 1994 and passed in April 1995, was the first of many Bills drafted as a result of the project. Three Bills introduced in November 1995 lapsed when the Parliament was prorogued before the March 1996 federal election. All were reintroduced and passed under the new Coalition government, and work on TLIP continued with several Tax Law Improvement Bills making significant improvements to the readability of many areas of income tax legislation.

After Brian Nolan retired in May 1998 arrangements for preparing tax legislation were changed. Members of the TLIP team were absorbed into Law Design and Development teams associated with Australian Taxation Office business lines. Working methods and drafting techniques used by TLIP were adopted by other teams, influencing drafting of the full range of tax laws. Meanwhile drafting of new tax laws to implement ongoing

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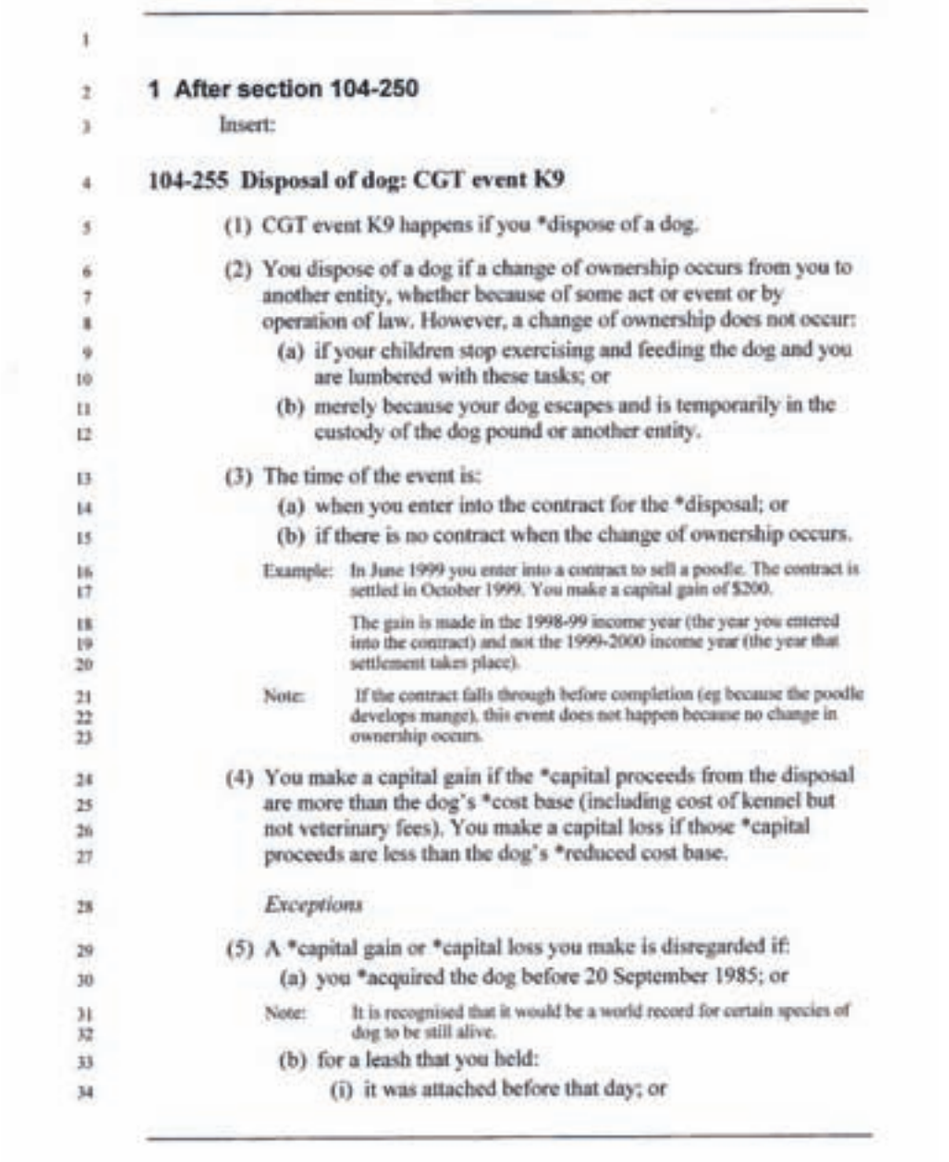
[13] A former drafter, Sandra Power was then a Legal 2 in the Office of General Counsel in the Attorney-General's Department, on temporary transfer to OPC from September 1997 until June 1998.

taxation policy reform continued in OPC. Always a large proportion of OPC's work, tax drafting in the late 1990s involved several large packages of Bills to implement 'A New Tax System', including Bills to impose a ten percent goods and services tax (GST) in 1999. In 1999-2000 the focus of tax reform turned to business tax, involving complex drafting projects to amend large and difficult parts of the law.

Canberra-based members of the TLIP team in 1994. Drafters Tom Reid (first on right, back row) and Jonathan Woodger (third from right, back row) and OPC executive assistant Jan Regent (first on right, front row) were part of the team at that time. [Photograph courtesy of Tom Reid]

In order to continue his work in integrated tax law design and drafting, Tom Reid left OPC at the end of his seven-year term as Second Parliamentary Counsel in February 2001 and became a consultant to the Australian Taxation Office. When responsibility for the design of tax legislation was transferred from the Tax Office to the Treasury in August 2002 he moved with it, later being appointed as the Treasury's Chief Adviser, Taxation. Peter Quiggin succeeded him as Second Parliamentary Counsel in OPC.



1 After section 104-250

Insert:

104-255 Disposal of dog: CGT event K9

(1) CGT event K9 happens if you *dispose of a dog.

(2) You dispose of a dog if a change of ownership occurs from you to another entity, whether because of some act or event or by operation of law. However, a change of ownership does not occur:

(a) if your children stop exercising and feeding the dog and you are lumbered with these tasks; or

(b) merely because your dog escapes and is temporarily in the custody of the dog pound or another entity.

(3) The time of the event is:

(a) when you enter into the contract for the *disposal; or

(b) if there is no contract when the change of ownership occurs.

Example: In June 1999 you enter into a contract to sell a poodle. The contract is settled in October 1999. You make a capital gain of $200.

The gain is made in the 1998-99 income year (the year you entered into the contract) and not the 1999-2000 income year (the year that settlement takes place).

Note: If the contract falls through before completion (eg because the poodle develops mange), this event does not happen because no change in ownership occurs.

(4) You make a capital gain if the *capital proceeds from the disposal are more than the dog's *cost base (including cost of kennel but not veterinary fees). You make a capital loss if those *capital proceeds are less than the dog's *reduced cost base.

Exceptions

(5) A *capital gain or *capital loss you make is disregarded if:

(a) you *acquired the dog before 20 September 1985; or

Note: It is recognised that it would be a world record for certain species of dog to be still alive.

(b) for a leash that you held:

(i) it was attached before that day; or

Renowned for finding endless possibilities for humour in legislation, Kerry Jones sought some light relief while preparing some particularly taxing provisions in the early 2000s. Parodying the basic capital gains tax provision (CGT event A1, about disposal of an asset), he added CGT event K9, referring to 'disposal of a dog'. Enquiring about his tax instructors' failure to respond to the draft with their usual promptness, Kerry was obliged to come clean when advised that the provision had been referred to the relevant subject area for detailed consideration.

Taxation law remained a major focus of OPC's work in subsequent years. Despite ongoing attention paid to recruitment and training, early in the 2000s there were occasional concerns that drafting resources might not keep pace with the demands of huge tax projects where substantial policymaking, consultation and drafting were demanded within tight time frames. Close liaison between senior drafters and Treasury instructors ensured that the government's highest priority revenue Bills, and others where instructions were already issued, were able to be drafted. First Parliamentary Counsel's *ex officio* membership of the Board of Taxation, from its establishment on 7 August 2000, helped OPC to maintain close involvement with developments in and implementation of tax law.

First Parliamentary Counsel was also a member of the Tax Design Review Panel, established in February 2008 to examine how to reduce delays in the introduction of tax legislation and improve the quality of tax law changes. Although the focus of the review was primarily on policy development aspects, some conclusions reached by the Panel were relevant to OPC. Major sources of delay in taxation legislation were found to be related to policy not being settled initially or being repeatedly amended, rather than to lack of access to drafting resources. To avoid duplication and achieve the most effective quality control, the Panel recommended that the legislative drafting function should remain within OPC. It also recommended against expanding the use of regulations. The Government accepted all the Panel's recommendations in principle. Continuing cooperation between OPC and the Treasury included further attempts to simplify tax law through coherent principle drafting. Reliant on clearly defined underlying policy, this method involved synthesising detail otherwise set out in black-letter rules in higher level principles to achieve the substantive effect of the measure.

FPC Peter Quiggin moved drafter Matthew Sait's admission as a legal practitioner of the Supreme Court of the Australian Capital Territory on 20 August 2004. [Photograph courtesy of Matthew Sait]

A Matter of Perspective

In a speech at a function to mark the end of the Australian Taxation Office Policy and Legislation Group in 2002, Peter Quiggin commented on occasional misunderstandings in OPC's relationship with its instructors:

> *The relationship between drafters and instructors from the ATO and from P & L in particular has always been a solid one of mutual respect although no doubt there are features on both sides that lead to misunderstandings arising from misinterpreting communications. With that in mind, I recall attending an ATO training day during the TLIP project where there was a bit of a team building exercise where people had to list the attributes of particular groups. It got to giving attributes to the drafters and the statement was read out 'Drafters are precious'. I noticed a number of drafters looking very chuffed by the suggestion that they were incredibly valuable, but I also noticed large numbers of Tax officers trying to hide their mirth at the suggestion that drafters had a few too many tickets on themselves.*

New Formats

Influenced by earlier developments in the use of plain language, readability, diagramming and document testing, the two major simplification task forces developed experimental formats for their first Bills, both introduced in 1994. The corporations and tax law improvement projects were viewed not just as 'rewrites' but as opportunities to benefit all drafters through the sharing of new ideas and approaches to simplifying laws. To ensure dissemination of the knowledge and simplification techniques gained in the course of these projects, the drafters working on them were asked to present regular seminars and circulate papers to their OPC colleagues. This created a certain amount of tension and was the cause of some heated debates between the outposted drafters, fired with enthusiasm for new ways of doing things, and other senior drafters wanting to defend the 'in-house' drafting style. Most of the seconded or outposted drafters returned to OPC with a greater appreciation of the benefits of closer consultation with instructors in rapidly evolving policy environments.

The Office developed processes for enhancing its capacity for consultation in the course of drafting Bills. When OPC was provided with funding for Regulatory Review and Law Revision Units to rewrite various legislation these units were not staffed on a permanent basis. Instead they were set up to maximise 'cross-fertilisation' between rewrite teams and those doing the regular drafting work of the Office. Particular drafting teams were

to be designated to handle review and revision work for limited periods, giving more drafters the opportunity to be involved in projects using advanced drafting techniques.

During 1995 OPC undertook an ambitious project to develop a new format for Bills. Under the active leadership of FPC Hilary Penfold, the project drew upon OPC's information technology expertise and previous research into document design and communication techniques. Introduced in 1996, the new format was designed to maximise the effectiveness of various drafting approaches by combining common elements of the experimental Bills produced by the simplification task forces. Aiming to achieve a greater degree of standardisation across Australian legislation, several features agreed on by the Parliamentary Counsel's Committee were also incorporated.

Based on the principle that Bills had a range of purposes, and would be read by people with different expectations and uses for legislation, the new format significantly improved the layout and visual impact of Bills, making them easier to read and to search for particular provisions. There was a substantial increase in the amount of 'white space' on each page; running headers including details of chapters, parts and divisions were used; and section and subsection numbers were separated out from the text. Cover pages, vertical spacing, variable font sizes and different margins improved visual clues to hierarchical relationships between different elements of the text. A table of contents included in each Bill showed all Acts amended or repealed by the Bill. Also adopted for subsequent reprints of existing legislation, the format was constantly monitored and minor improvements made in the light of feedback from stakeholders.

As Attorney-General from March 1996 to October 2003, Daryl Williams was responsible for OPC's involvement in a demanding legislation program, which included several notably large or problematic Bills.

[Photograph courtesy of the Attorney-General's Department]

One new formatting feature developed in the mid-1990s was the use of 'asterisking' as a way of highlighting terms defined for the purposes of an Act. Much time and effort was involved in making this apparently very simple change. Initially used by the TLIP team, the technique was developed over some months and was refined in simplified taxation Bills. It involved using an asterisk at the beginning of a defined word or phrase,

to refer the reader to a note at the bottom of the page which in turn pointed to a 'dictionary' of definitions and cross-references located at the end of the Act. Asterisking caused considerable discussion and debate in OPC, where not everyone was in favour of the approach. In response to feedback, comprehensive guidelines on the use of asterisking were developed. These made it clear that while drafters were not obliged to use asterisks in a Bill for a new Act, if asterisking was used for that purpose or for amending an asterisked Act, then it must be used in strict accordance with the relevant Drafting Direction. This new feature attracted some interested comment from Senators during Senate Estimates Committee hearings in May 1999.

18 Restraining orders—people suspected of committing serious offences

When a restraining order must be made

(1) A court with *proceeds jurisdiction must order that:

(a) property must not be disposed of or otherwise dealt with by any person; or

(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;

if:

(c) the *DPP applies for the order; and

(d) there are reasonable grounds to suspect that a person has committed a *serious offence; and

(e) any affidavit requirements in subsection (3) for the application have been met; and

(f) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds.

Note: A court can refuse to make a restraining order if the Commonwealth refuses to give an undertaking: see section 21.

*To find definitions of asterisked terms, see the Dictionary, at section 338.

Section 18 of the *Proceeds of Crime Act 2002*, demonstrating the technique of 'asterisking'.

Plain Speaking

OPC's appearance before Senate Estimates Committees was sometimes entertaining. Veteran Senator Barney Cooney in particular seemed to enjoy the verbal exchanges with FPC Hilary Penfold, as demonstrated in an extract from the 1997 hearings:

SENATOR ABETZ (CHAIR): *Look, Senator Cooney, you are going to get another bite of the cherry now with Ms Penfold, Office of Parliamentary Counsel. I am sure you have got some gruelling questions.*

SENATOR COONEY: *I do not mind asking Mr Skehill [Secretary to the Attorney-General's Department] but I am a bit frightened about asking Ms Penfold, because she gives you a hit behind the ear if you are impolite.*

SENATOR ABETZ: *In that case, could I encourage Ms Penfold to remain at the table at all times.*

SENATOR COONEY: *Let us say that someone was precipitous enough, to use a neutral word, to suggest that, when we try to use plain English so that people can understand the language, it sometimes makes it more difficult for judges because they have got to work it through and words that they were familiar with are no longer used, and it would have been better if those familiar words had been used. What would you say if that sort of thing was said?*

MS PENFOLD: *If anyone dared to say that.*

SENATOR COONEY: *If anyone dared.*

MS PENFOLD: *I think I would say, with the greatest of respect, Senator Cooney, that we have been there and done that, if you like. That is an argument that came up, mainly probably from our side of the table, 10 years ago when people first started suggesting that we could do a little bit better in terms of writing comprehensible English than we had been doing. There have been occasions in those 10 years—or perhaps longer than that now—since we started making a real effort to improve our writing style, when judges have had minor problems. There are a couple of well known cases. The Blunn and Cleaver one, which we quoted in our annual report a few years ago, is not so much related to language as such but to attempts to rewrite legislation in general. My perception is that these days that is not regarded as a big issue. We do not have the resources to monitor everything that comes out of the courts. In terms of what gets reported in the papers and what comes back to us with requests for amendments next time around, I do not think it is a big issue.*

SENATOR COONEY: *If you use a particular word, do you make sure that is the only*

way that word is used throughout the statute?

MS PENFOLD: *We would certainly try to do that within a particular bill. Inconsistency in language in that way would not be acceptable. You would be aware of the provision in the Acts Interpretation Act. It is one of the 15s—I cannot remember the letters, which I should be able to—which allows concepts to be expressed in simpler language without raising an inference that it is a different concept. I guess we rely on that occasionally, deep down as it were, but we are not often called on to use it.*

SENATOR McKIERNAN: *Now that Senator Cooney has taken the brunt.*

MS PENFOLD: *I thought I was very restrained.*

SENATOR McKIERNAN: *Yes, but we worked that as a tag team. He was to go in and take the hard knocks and I was to come in more gently. I am grateful to my colleague.*

[Senate Legislation Legal & Constitutional Committee, 20 August 1997, pp. 44-45.]

Advancing Technology

Continual enhancement of OPC's IT systems kept pace with the Office's pursuit of excellence in drafting. In 1995 the DOS-based WordPerfect word-processing package was replaced with Word 6 for Windows, and Windows 3.11 for Work Groups was introduced. Internal email began operating around the same time. Crucial to the production of the new Bills format adopted in 1996, the upgraded software enabled staff to produce electronic camera-ready copy of Bills for printing. Bills could be provided on disk to the Australian Government Publishing Service without the previous need for conversion or editing. Further reducing the Office's reliance on the AGPS and providing much greater flexibility in the production of legislation, the new arrangements meant that OPC was well-positioned when the AGPS was sold in October 1997 and contracts for the printing of Bills needed to be renegotiated with the new owner, CanPrint Communications Pty Ltd.

A constant supply of new technological tools was developed in-house to facilitate more efficient and higher quality production of Bills. Essential to this process, editorial staff were also assisted by evolving technology. As well as automated checks, such as of spelling and grammar, built into word-processing software the IT staff developed a battery of customised checks to identify departures from OPC's basic formatting requirements. Increasingly sophisticated templates and checking macros were designed to do pre-editorial checking of draft Bills. By 1 January 2011 Word macros representing

a phenomenal 70 000 lines of code had been developed. Wide-ranging checks included those relating to formatting errors, incorrect words, possible breaches of Drafting Directions and matters needing consideration or requiring action by the drafter. Macros could also be used to find and compare different versions of a Bill; to renumber provisions and cross-references in drafts; to help finalise drafts for printing or despatch to Parliament House; and to assist with creation of standard documents commonly associated with draft legislation. As fast and flexible as macros became they did not replace traditional processes for quality assurance, where each Bill was read by at least two drafters and was thoroughly checked by highly trained editorial staff.

More Than Words

Highly sophisticated checking macros developed within OPC did much to facilitate editorial checking of Bills. However, constant vigilance on the part of both drafting teams and editorial staff was still required to prevent errors of the kind which crept into drafts, and on rare occasions into legislation itself.

Sometimes it was just a matter of a missing or misplaced letter which might have put a clause in contention for John McKenzie's 'Mispint' Prize in early editions of the staff newsletter, *Bills and Papers*. For example:

- the version of the Patents Amendment Bill 1988 which contained a clause under which an applicant for an extension of the term of a patent might appeal to 'the Feral Court'
- mention in bankruptcy legislation of a 'pubic examination' or the 'Insolency and Trustee Service'
- reference to 'marine orgasms' in an environmental protection Bill
- specifying 'meditation' as a means to resolving family law disputes
- a missing 'i' which might imply that a Government Minister was instead a place of worship
- presentation of a 'Statue Law Revision' Bill – intended to become an Act which would correct earlier mistakes in legislation.

Overzealous spell-checking led to the introduction in 1997 of a Veterans' Affairs Legislation Amendment Bill which referred to 'offal' instead of 'OIFA' (ordinary income free area).

Some phrases drafted were notably open to interpretation on the part of the reader, such as:

- a schedule specifying 'exemptions for space objects and goods imported by Olympians'
- section 70-65 of the *Income Tax Assessment Act 1997* which referred to 'the number of days since you most recently began to hold the horse for breeding'.

Amendments to Bills during passage in Parliament sometimes had surprising consequences:

- When a senior taxation officer objected to a reference to 'latex sheaths' in a sales tax schedule in the early 1940s and insisted on changing the description, the Minister of the day needed to get up in Parliament to move an amendment which specified 'omit "latex sheaths", insert "condoms"'.

On at least one occasion the drafter attempted the technologically impossible, as demonstrated for some time in a 1983 amendment to section 100 of the *Postal Services Act 1975*:

- *Except with the approval of the Commission and upon compliance with such conditions as are determined by the Commission, a person shall not send by post, by courier service* ***or by electronic mail service*** *a postal article that encloses or contains an explosive, dangerous or deleterious substance. Penalty: Imprisonment for 10 years.*

Drafters occasionally had the opportunity to display more than usual literary flair, as with the amendment to subsection 766C(7) of the *Corporations Act 2001* which read: 'Omit "not to be", substitute "to be, or not to be,"'.

Drafting Directions, Word Notes and Information Technology Circulars were regularly updated and consolidated to accompany changes in formatting and technology. Crucial IT training was carried out to ensure that staff were able to make the best use of resources. Customised to OPC's specific needs, nearly all training was provided in-house. Some training was also provided to staff from other organisations involved in the production of Bills to assist them to use efficiently the Office system. In addition to the small team of IT professionals, the drafter Director of IT position continued to provide a drafter's perspective on the system. When Peter Quiggin became First Parliamentary Counsel in 2004 the mantle passed to Stephen Mattingley. Desktop computers and the word-processing package were upgraded during 1998-1999 and again during the following decade. In 2009 all staff were allocated two computer

monitors. This innovation was copied from the Office of Legislative Counsel in Victoria, British Columbia, following the 2003 drafting exchange with that Office.

An OPC web page was established in 1999, and drafters were given enhanced online access to law digests, commentary and other legal research tools. Production of legislation was accelerated by advances such as secure online access to search a database of legal advice given by the Australian Government Solicitor; Fedlink, which enabled Bills to be emailed via the internet to clients through a secure system; and Cabnet terminals allowing electronic transmission of Cabinet decisions and submissions. Heavily dependent on the ICT systems integral to its operations, OPC put comprehensive computer risk management and contingency plans in place – including those to cope with widely anticipated Y2K (Year 2000) emergencies which did not eventuate.

IT support with a AAA rating – Andrew, Amir and Adrian. L-R: OPC's IT Director Andrew Newbery with other members of the A-Team, Amir Shirazi-Rad and Adrian Holly, inside the server room in December 2010. [OPC photograph]

Constitutional Review

Reviewed by several bodies since 1901, the Constitution was again subjected to close scrutiny at the end of the twentieth century. Public discussion was initiated at a Constitutional Centenary Conference held in Sydney in April 1991 to commemorate the centenary of the National Australasian Convention of 1891.[14] Presided over by former Governor-General Sir Ninian Stephen, the conference was designed to enable public non-party political consideration of aspects of the Constitution.

Arising from this, the Constitutional Centenary Foundation was established to facilitate informed public debate on the Constitution during the decade leading up to its centenary in 2001. The Foundation's role was to encourage individuals as well as

[14] Held in Sydney from 2 March to 9 April 1891, this was the first of the federal conventions held in 1891 and 1897-1898 to consider the draft for the Australian Constitution. Representatives of New Zealand were present at an informal meeting of officials held in 1890 to discuss federation, and at the National Australasian Convention of 1891.

community, educational and business groups to take an interest in, understand and express their own views about the Constitution. In 1993 a Republic Advisory Committee was appointed to produce an options paper describing the minimum constitutional changes that would be necessary to achieve an Australian federal republic. OPC drafted a Bill which was ultimately passed as the *Constitutional Convention (Election) Act 1997*, providing for the election of delegates to a convention, set up to consider the question of whether or not Australia should become a republic.

Prime Minister John Howard gave an undertaking that if a 'clear view' about a particular republican model was reached at the Constitutional Convention, which met in Canberra from 2 to 13 February 1998, then that model would be put to a referendum. If approved by the referendum, the republic would begin on 1 January 2001, the centenary of Federation. Following vigorous debate at the Convention, a model for a republic emerged and the insertion of a preamble to the Constitution was suggested. Proposed alterations to the Constitution would see the Governor-General replaced by a President, and would provide a method for choosing and dismissing the President.

During 1998-1999 legislation to amend the Constitution to establish Australia as a republic was drafted. Revised in the light of public consultation in early 1999, the Constitution Alteration (Establishment of Republic) Bill and the Presidential Nominations Committee Bill were introduced into Parliament. In June and July 1999 all States passed uniform request legislation to allow the Commonwealth Parliament to amend section 7 of the *Australia Act 1986*. The resultant changes would commence only if a republic was approved at referendum.

A Select Committee of the Parliament which examined the Commonwealth legislation reported that it was satisfied that the Bills represented a fair and effective expression of the convention model. Supported by both Houses, the Bills for the Constitution Alteration (Establishment of Republic) and Constitution Alteration (Preamble) were passed on 12 August 1999. At a referendum held on 6 November that year two questions were put to voters – whether Australia should become a republic, and whether the new preamble should be inserted in its Constitution. Neither proposal was approved by the requisite 'double majority' of electors. No State or Territory returned a majority 'yes' vote on the preamble question, and only the Australian Capital Territory recorded a majority vote in favour of a republic.

Bills for a Republic

Some eminent commentators provided very positive feedback to the Joint Select Committee on the Republic Referendum about the drafting of the Constitution Alteration (Establishment of Republic) Bill and the Presidential Nominations Committee Bill. The drafting style of the Bills reflected that of the existing provisions of the Constitution.

> ***Drafting issues***
>
> *7.35 The drafting of the Republic Bill and the Nominations Committee Bill attracted favourable comment in the evidence before the Committee. For example, the Hon Gough Whitlam AC QC noted the 'skill and clarity' with which the Bills had been drafted.*[19] *Similarly, Professor Greg Craven commented on the quality of the Republic Bill, noting that 'if it becomes part of the Constitution, there will be no embarrassing jumps, inconsistencies or jarring changes of style or terminology.*[20] *Mr Dennis Rose QC remarked that 'the Bills are admirable'.*[21]
>
> *...*
>
> *7.43 The Committee agrees with the sentiments expressed by Mr Whitlam and Professor Craven, and with the approach taken in the drafting of the Republic Bill outlined by the Referendum Taskforce.*
>
> [19] *The Hon Gough Whitlam AC QC, Submissions, p. S732.*
> [20] *Professor Greg Craven, Transcript, p. 300.*
> [21] *Mr Dennis Rose QC, Transcript, p. 36.*
>
> [Advisory Report by the Joint Select Committee on the Republic Referendum, August 1999, pp. 101-103]

Issues of constitutional validity were at the heart of two momentous High Court decisions which led to further major changes in corporations law early in the twenty-first century. In *Re Wakim* in 1999 the High Court held invalid cross-vesting legislation purporting to give the Federal Court jurisdiction to exercise State judicial power.[15] Most affected by the decision was the corporations law jurisdiction of the Federal Court, pivotal to the national cooperative scheme. OPC drafted the Jurisdiction of Courts Legislation Amendment Bill 1999 to deal with the judicial review of decisions made by Commonwealth officers under state laws. The judgement in *The Queen v*

[15] *Re Wakim; Ex parte McNally* (1999) HCA 27.

Hughes, handed down on 3 May 2000,[16] identified certain problems with legislative structures and devices underpinning the corporations law, raising concerns about the continued validity of the cooperative scheme. Resultant uncertainty about corporations regulation compromised the ability of the regulators to administer and enforce the law. Negotiations between the Commonwealth, States and Territories to resolve the situation resulted in an unprecedented degree of cooperation. In an historic decision on 25 August 2000 the States unanimously agreed to refer appropriate power to the Commonwealth to enact a single corporations law applying in all States, the ACT and the Northern Territory. The Corporations Bill 2001 and several related Bills were drafted to put this agreement into practice. A package of Financial Services Reform Bills made significant related amendments regulating financial products and services. A new era of cooperation in national regulation of corporations and financial markets began with the commencement of the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* on 15 July 2001.

21st Century

While the centenary of Federation was not marked by implementation of the Republic Bills, during 2001 OPC participated enthusiastically in celebrations marking the centenary of the Australian Public Service. Most memorable was the preparation of a display of photographs and material relating to Commonwealth legislative drafting since 1901. Entitled 'Curing the Centipede's Arthritis'[17] the display was assembled in the public areas of the Office, and officially opened in June 2001. It was created by Adrian van Wierst, who also provided some photographic and research assistance relating to parliamentary drafting for the Attorney-General's Department centenary history.

As part of a 'Week of Celebrations' organised by the Institute of Public Administration Australia, a formal dinner was held on 19 June 2001 in the Great Hall of Old Parliament House, to enable agency heads to acknowledge staff deserving of special recognition for their service to the public. Executive Assistant Mary Ashford, editor Allan Greenwood and drafters Anne Treleaven and Adrian van Wierst were selected to represent OPC at the dinner. These people, along with former FPC Geoff Kolts, were also awarded a special Centenary of Australian Public Service medal. Adrian van Wierst was the first OPC recipient of a Public Service Medal (PSM) in 1996. This award was established by Letters Patent in 1989 to recognise outstanding service by employees at all levels of Government. First Parliamentary Counsel Hilary Penfold and Peter Quiggin received Public Service Medals in 2000 and 2008 respectively. Keith Byles was awarded the Public

[16] *R v Hughes* (2000) 171 ALR 155.
[17] The title was derived from a story told by Charles Comans at the farewell function for John Ewens in 1972.

Service Medal in the Australia Day awards in January 2010, in recognition of his outstanding work during 30 years of drafting.

Adrian van Wierst receiving his Public Service Medal from the Governor-General, Sir William Deane. Government House 1996. [Photograph courtesy of Adrian van Wierst]

Hilary Penfold receiving her Public Service Medal from Governor-General Sir William Deane. Government House 2000. [Photograph courtesy of Hilary Penfold]

Increasing volumes of national security and anti-terrorism legislation were drafted after 11 September 2001. On that morning in the United States of America, four commercial passenger jet airliners hijacked by al-Qaeda terrorists were intentionally crashed into the twin towers of the World Trade Centre in New York, into the Pentagon and in a field in Pennsylvania. The mostly civilian death toll from the attacks was almost 3000 people from over 70 countries, including 11 Australians. Senior drafters were involved in the urgent government response to the crisis from the first. A series of Bills proscribing terrorist organisations, giving additional power to Australian security and protective services, and dealing with wide-ranging related matters was drafted in subsequent years. A pool of drafters was involved at various stages, and the legislation closely monitored. There was no specific anti-terrorist Act. Many of the new measures were incorporated in the Criminal Code or in other relevant legislation. Security and anti-terrorism legislation presented particular challenges for drafters. As well as the

amorphous and difficult to define nature of terrorism itself, the subject matter attracted intense political and media attention. Remaining politically neutral, drafters still needed to bring an awareness of the political context to this work, and to aim for as much clarity as was achievable.

During an extended period of drought, bushfires caused widespread devastation in the ACT region in 2003. Lightning strikes in early January started numerous fires which destroyed millions of dollars' worth of plantation pine and other forests, and continued to burn in the Brindabella and Namadgi National Parks. In extreme weather conditions on 18 January 2003 fires burning to the west of the city broke containment lines and roared into the suburbs of Canberra. Before a change in the weather brought the bushfires under control around 70 per cent of the ACT's area had been damaged, 414 houses in the outer suburbs of Canberra had been razed, 67 rural houses destroyed and hundreds more damaged. Numerous buildings of historical significance were lost, including two houses at Tidbinbilla and the Canberra Alpine Club's 65-year-old chalet at Mount Franklin, the first club-built ski lodge in mainland Australia. Most notable of the cultural and scientific damage was the destruction of much of the Mount Stromlo Observatory – the nerve centre of the Australian National University's Research School of Astronomy and Astrophysics. Five telescopes, instrumentation and engineering workshops, the observatory's library and the main administration buildings were burned. A significant relief and reconstruction effort was required in the aftermath of the disaster, which took the lives of four people and injured many more. Especially hard hit was the suburb of Duffy where some 200 homes were destroyed, including that of OPC staff member Janis Dogan.

Kerry Jones at an OPC barbecue at Weston Park in 1996. [OPC photograph]

Achieving another milestone in 2001, as the first woman to be made a Commonwealth Queen's Counsel, Hilary Penfold also set a record 24-year term as the longest serving female drafter in OPC. The first holder of the office to be reappointed, she was First Parliamentary Counsel for more than 10 years, before resigning on 18 January 2004 to take up the position of inaugural Secretary of the Department of Parliamentary Services. Peter Quiggin was appointed First Parliamentary Counsel from 13 May 2004. Vince Robinson succeeded him as Second

Parliamentary Counsel from 1 December that year until 13 January 2009, when he was replaced by Iain McMillan. The other Second Parliamentary Counsel, Kerry Jones, retired on 28 April 2005 and was succeeded by Marina Farnan, who was appointed to the position on 18 August 2005.

Industrial Relations Reform

Successive governments from the 1980s dedicated substantial drafting resources to constantly evolving industrial relations laws. Central to a legislative reform package resulting from a comprehensive review of the federal system of industrial relations, initiated by a new Labor government in 1983, was the *Industrial Relations Act 1988*. Replacing the repealed *Conciliation and Arbitration Act 1904*, the Industrial Relations Act introduced a new federal framework for the prevention and settlement of industrial disputes. It established the Australian Industrial Relations Commission, and brought industrial and staffing arrangements for Commonwealth public sector employees more into line with those in the private sector. Major amendments contained in the *Industrial Relations Reform Act 1993* were consistent with a growing focus on enterprise bargaining and workplace agreements. Far-reaching changes and the restructuring of the legislation which came into effect on 30 March 1994 included a significant shift in its jurisdictional basis, with many provisions of the reform Act relying on the external affairs and corporations powers of the Constitution.

At the end of 1996, a recently elected Coalition government passed the *Workplace Relations and Other Legislation Amendment Act 1996* which substantially amended the *Industrial Relations Act 1988*, retitling it as the *Workplace Relations Act 1996*. Aiming to provide a framework for cooperative workplace relations, the Act supported a more direct relationship between employers and employees, a reduced role for third party intervention and greater labour market flexibility. Numerous amendments to the new framework were drafted over the next decade. During the Spring sittings in 2005, a substantial portion of OPC's resources were allocated to the *Workplace Relations Amendment (Work Choices) Act 2005*. Forming a single national industrial relations system, the Work Choices Act streamlined workplace agreements, exempted companies from unfair dismissal laws under certain conditions and placed greater restrictions on industrial action.

While Work Choices involved numerous drafters, a record number of drafting teams was assigned to work together to produce a large package of Bills given utmost priority by the incoming Labor government in the months following the November 2007 federal election. Repealing the *Workplace Relations Act 1996*, the 'Fair Work' laws comprehensively overhauled the existing workplace relations system. A new regime was established, to be regulated by a national tribunal, Fair Work Australia, and the Office of

the Fair Work Ombudsman. Completed in time for introduction in the Spring sittings of 2008, the Fair Work project was also significant for the impetus given to efforts within the Office to achieve even greater consistency in the style of provisions drafted by different teams. As part of the project a guide was developed, setting out particular approaches to be adopted for drafting. Notable as an example of legislation where complex policy was made as readable as possible, at least this aspect of the Bill which became the *Fair Work Act 2009* received general support in Parliament. During a Senate Standing Committee examination of the Bill, Opposition Senator Eric Abetz congratulated the drafters on 'an excellent job'. Declaring the Bill easy to read and as having a 'logical progression', he encouraged 'cross fertilisation' from the Fair Work Bill to other legislation.[18] The subsequent committee report noted:

> *Coalition senators congratulate those who drafted the Bill on both its layout and clear nature. The Bill is easy to read and understand, and uses language and terminology that is clear and simple. It is envisaged that this will ultimately make the Bill more readily accessible and useful to those to whom it applies, namely employers and employees within a workplace.*[19]

Fair Work

Drafter collaboration on the Fair Work Bill in 2008 was facilitated by development of printed guidelines for tackling this particularly large and complex project. The work of the seven drafting teams engaged in the project was coordinated by First Assistant Parliamentary Counsel Louise Finucane. She introduced some light relief into an otherwise intensive task by assigning each drafter an alter-ego as a superhero, setting out the rules for proceeding in a humorous fashion and distributing regular small rewards recognising individual and team achievements. The generally courteous and collegiate approach of the Office was reflected in Rule 5:

Rule 5 Superheroes are not to be cranky etc.

(1) Superheroes shall not be cranky, disgruntled, miffed or generally peeved about the Rules of the Superhero Star Chart or on any other matter to do with the Fair Work Bill.

(2) Superheroes who exhibit such futilitarian behaviour shall stop it. Loosen up. Now.

[18] Standing Committee on Education, Employment and Workplace Relations Fair Work Bill 2008 [Provisions], 19 February 2009, p.68.
[19] ibid. Coalition Senators' Minority Report, p.135.

Indigenous Issues

Significant legislation relating to Indigenous Australians was drafted towards the end of the century. The *Aboriginal and Torres Strait Islander Commission Act 1989* established a body corporate, responsible for administering government policies relating to Aboriginal persons and Torres Strait Islanders. Historic new legislation was drafted following the landmark *Mabo* case in the High Court on 3 June 1992 which effectively made irrelevant the concept of *terra nullius* (land belonging to no-one) accepted from the commencement of British colonisation in 1788.[20] The decision gave legal recognition to customs and traditions connecting Indigenous people with their land. Adopting and confirming the fundamental propositions of the *Mabo* decision, the *Native Title Act 1993* (which commenced on 1 January 1994) established a legal regime respecting native title rights, to be adjudicated by the Native Title Tribunal. Courts and legislatures across Australia continued to examine and develop the concept of native title.

L-R: Prime Minister John Howard, with Chief General Counsel Robert Orr and Second Parliamentary Counsel Kerry Jones – celebrating the passage of the Native Title Amendment Bill. Parliament House, Canberra 1998. [OPC photograph]

[20] *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

Another important High Court decision in the *Wik* case in 1996 related to a claim of native title on land that included pastoral leases granted by the Queensland Government.[21] The Court determined that native title could only be extinguished by a law or an act of the Government which showed clear and plain intention to do so. Responding to the *Wik* decision, the *Native Title Amendment Act 1998* implemented the Government's '10 Point Plan' which placed certain restrictions on land rights claims. Drafted by teams led by Kerry Jones, for different governments, both Native Title Bills demanded long and rigorous drafting effort. A package of coordinated measures aimed at improving administration of the native title system was drafted in 2006.

As an employer, OPC raised staff awareness of issues related to Aboriginal and Torres Strait Islanders through development of its Reconciliation Action Plan. Developed in consultation with staff to promote reconciliation both within OPC and across the broader Australian community, the Plan included strategies for the recruitment and employment of Indigenous Australians and promoted an understanding of Indigenous culture and issues among staff. A cultural awareness seminar was held for all staff in July 2008. Additional reference material was purchased for the Aboriginal and Torres Strait Islander section of the library. Indigenous artworks, and documents highlighting key legislation affecting Indigenous Australians, were assembled to put on show in the Office. The resultant Reconciliation Display was officially launched on 27 May 2010.

R-L: Reconciliation Display coordinator, Alison Cernovs with drafter Anne Treleaven, who assisted with the research work for the foyer display. MTA House 27 May 2010. [OPC photograph]

[21] *Wik Peoples v Queensland* ("Pastoral Leases case") [1996] HCA 40; (1996) 187 CLR 1; (1996) 141 ALR 129; (1996) 71 ALJR 173 (23 December 1996).

Client Relationships

Between 1989 and 1992 OPC provided some special practical training to Senate staff through short secondments to the Office during parliamentary recesses. In February 1994 OPC presented its first Legislation Process Course. The one-day course was developed by drafters in response to a need identified in the *Clearer Commonwealth Law* report. Designed to assist policymakers and instructing officers in Commonwealth agencies to understand the intricacies of the drafting process, the course addressed a comprehensive range of topics relating to the development of legislative policy; preparation of drafting instructions; working with the Office on the preparation of a draft Bill; and Commonwealth Acts of general application. Presented by teams of two or three drafters, using standardised materials, the course included a session on parliamentary programming of legislation and procedures relating to its passage, originally provided by officers from the Department of the Prime Minister and Cabinet. Enthusiastically received, the Legislation Process Course proved hugely successful. Sessions were often oversubscribed, so priority needed to be given to nominees likely to be instructing in the near future. On occasion courses were arranged for individual departments. With Legislation Process Courses scheduled in the breaks between parliamentary sittings, OPC generally exceeded its target of conducting ten each year. As many as 17 courses were conducted in a single year. By the end of 2010 a total of 199 Legislation Process Courses had been conducted by the Office. From time to time course materials were made available, on request, to other jurisdictions, including the New Zealand Parliamentary Counsel Office.

An Office publication gave pragmatic assistance to clients generally. The first edition of *Working with the Office of Parliamentary Counsel: A guide for clients* was prepared and distributed in August 1999. A second edition was published in 2002, and a third in 2008.

A meeting of some of OPC's senior staff with Scottish exchange drafter Willie Ferrie. L-R: Claire Parkhill, John King, Willie Ferrie, Marina Farnan, Louise Finucane, Nick Horn, Paul Lanspeary, Iain McMillan, Susan McNeilly and Peter Quiggin. MTA House 2009. [OPC photograph]

Top Marks

From the beginning, course evaluations indicated that OPC's Legislation Process Courses provided valuable training in policy development and preparation of instructions. Generally describing the courses as very good, well organised, comprehensive, professionally presented and informative, some participants were more expressive in their praise:

- *I almost feel cranky because this course is just so good. I feel like I have spent the last six months working in a vacuum. At the risk of sounding trite, I feel like jumping on the bonnet of my boss's SES vehicle and screaming 'Why didn't you tell me about the OPC course!!!' I learnt so many things today that I have never been told about in 7 years of legal studies.*
- *An essential training course for anyone dealing with legislation.*
- *A lot of the mystery has been taken away.*
- *Simply stunning presentation—experts presenting in an accessible way to the non-expert. Complete and appropriate mix of the practical and theoretical.*
- *An excellent comprehensive introduction that provides significant value, even for instructors with a degree of experience.*
- *It was the best course I have done since joining the APS.*

Until the late 1990s OPC did not conduct formal client surveys, but regularly reported on unsolicited written expressions of satisfaction and appreciation. Rare instances of dissatisfaction were generally related to unavailability of drafting resources for a client's particular project. A system of client advisers was initiated in November 1993. Each SES drafter was nominated as a contact officer for several departments and agencies, to provide ready advice on drafting matters. Improved contact often facilitated quicker, simpler or more coherent drafting. Drafters contributed policy analysis and project management skills early in drafting projects, enabling instructors to make policy choices with a greater appreciation of their impacts on legislative and administrative structures. From 1997 regular surveys were sent to instructors. Relating to all Bills completed during a sittings, the client surveys sought more formal feedback on OPC's handling of instructions, dealings with instructors, drafting processes and the drafting product. Responses indicated a continuing high degree of satisfaction with the work of drafting teams, while constructive feedback was used to enhance OPC's service to clients. The

Office's relationship with one of its major clients was altered following passage of the *Judiciary Amendment Act 1999*, which implemented new arrangements for funding legal advice on Cabinet work, including legislative proposals and draft legislation. Closer liaison with key stakeholders such as the Attorney-General's Department, the Department of Prime Minister and Cabinet and the Treasury, put in place from 2005, contributed to improved communication with instructing agencies and resolution of any issues at an early stage.

Annual photograph of OPC staff, 2008. [OPC photograph]

Early in 2010 OPC carried out a comprehensive client survey of groups of experienced users of legislation. Respondents were asked to comment on the usefulness and appeal of various innovations in drafting style. Features surveyed included: the new format for legislation introduced in 1996; innovations such as the use of asterisks and drafting in the second person; and a new model for commencement provisions, implemented in 2002 to reduce complexity in laws. A particularly high quantity and quality of responses provided OPC with a clear picture of reactions to many innovations in drafting. Most changes tested received very favourable feedback from across the groups surveyed. Among the features which rated particularly well were the revised format for legislation; the new form of commencement provisions; and the use of notes, tagging of concepts, tables and subsection headings. Drafting style was subsequently adapted to deal with a particularly unfavourable reaction to drafting in the second person, and low levels of support for the use of asterisks, diagrams and method statements. Comments indicated that respondents were generally pleased with improvements made to drafting style over time, and supportive of OPC's efforts to make legislation less complex.

OPC staff enjoying a Friday morning 'cake club'. L-R: standing: Amir Shirazi-Rad, Glenyce Francis, Marina Farnan, Adrian Holly, Tom Manwaring, Scottish exchange drafter Willie Ferrie, Paul Lanspeary, Nick Horn, Kathleen McCoy, Andrew Paloni, Lisa Robinson, Andrew Freeman, Ellen Vernon, Tony Perkins and Luke Robert. Kneeling: Beth Battrick and Susan McNeilly. MTA House 2009. [OPC photograph]

2010-2011

OPC staff celebrated the fortieth anniversary of the establishment of the Office on 12 June 2010 in typical fashion, at the Friday morning cake club. The very high level of demand for drafting resources continued. Among the achievements of 2010 was a major overhaul of Freedom of Information (FOI) laws, generally acknowledged as the most significant reform of these laws since the enactment of the *Freedom of Information Act 1982*. Aiming to increase public participation in government processes through improved community access to information, the *Freedom of Information Amendment (Reform) Act 2010* and associated legislation established the Office of the Australian Information Commissioner. As well as the new Australian Information Commissioner, the Office included a new Freedom of Information Commissioner, and the

L-R: Drafters Andrew Freeman and John King cooking for the crowd at the end-of-Sittings barbeque in March 2010. [OPC photograph]

existing Privacy Commissioner. A framework for agency-driven proactive publication of government information was put in place; a single public interest test (favouring disclosure) was applied for many exemptions; application fees removed; charges abolished for accessing own personal information; and the open access period under the Archives Act reduced from 30 to 20 years for most records. Media representatives described the new legislation as 'a substantial win for free speech', praising the bureaucrats involved for their 'incredibly hard work' in getting the detail right.[22]

OPC's fortieth anniversary on 12 June 2010 was celebrated at 'cake club'. L - R: Amir Shirazi-Rad, Louise Finucane, Johanna Lynch, Sally Beasley, Stephen Mattingley, Paul Lanspeary, Linley Henzell, Michelle Fletcher. [OPC photograph]

Almost exactly 110 years after the introduction of the *Acts Interpretation Act 1901*, the Acts Interpretation Amendment Bill 2011 was introduced into the House of Representatives by Attorney-General Robert McClelland on 12 May 2011. The first truly comprehensive update of the principal Act, the Bill modernised its language, concepts and structure. Continuing as a vital resource for judges, lawyers, policymakers and the general public to be able to read and understand legislation, the new Acts Interpretation laws (which were passed on 15 June 2011) aimed to reduce the complexity and improve the clarity and accessibility of the overarching rules for

[22] News Limited chairman and chief executive John Hartigan, on behalf of 'Right to Know', a coalition of Australian media companies. Media release 13 May 2010.

interpreting legislation. Thanking those who contributed to the Bill, especially OPC for the significant time and effort invested in its preparation, the Attorney-General noted that the new law would also reduce the size of the Commonwealth statute book by including a number of new general rules and definitions, avoiding the need to repeat these in other Commonwealth Acts.

Top Training

When Theresa Johnson was appointed Queensland Parliamentary Counsel in February 2010, former OPC drafters were heads of four Australian drafting offices, as well as one overseas. Peter Quiggin was Commonwealth First Parliamentary Counsel, James Graham was First Assistant Secretary of the Commonwealth Office of Legislative Drafting and Publishing, and Dawn Ray was Northern Territory Parliamentary Counsel – with Paul Wan as the Deputy Parliamentary Counsel. From August 2006 until January 2011, John Leahy was Director and Legislative Counsel of the Qatar Financial Centre Regulatory Authority.

Appointed Parliamentary Counsel in the Northern Territory in September 2008, Dawn Ray started her drafting career in Darwin prior to working in OPC during the late 1980s. She then had 17 years drafting in the Office of the Queensland Parliamentary Counsel before moving back to the Northern Territory. [Photograph courtesy of the Northern Territory Department of the Chief Minister]

Theresa Johnson was appointed Queensland Parliamentary Counsel in 2010. Recruited by Geoff Kolts while she was studying in Cambridge, Theresa received her training as a drafter with OPC from 1986 to 1989 before joining the Queensland Office in 1991. [Photograph by Just Photography]

Working closely with its primary stakeholders OPC continued its efforts to, as far as possible, reduce complexity in legislation. Initiatives commenced in 2010 were linked to the Government's 'Strategic Framework for Access to Justice in the Federal Civil Justice System'[23] – Attorney-General McClelland asking that each drafter become a 'constructive agent for reducing complexity'. Cooperation with the Office of Legislative Drafting and Publishing in the Attorney-General's Department was further enhanced, the two Offices examining their drafting approaches to ensure greater consistency in style. On 29 March 2011 the Attorney-General announced the reappointment of First Parliamentary Counsel Peter Quiggin for a second seven-year term. The Attorney-General noted the Government's satisfaction with OPC's leadership, stating that the Office had 'maintained an outstanding reputation while undertaking initiatives to improve the clarity and quality of Commonwealth legislation and in ensuring high drafting standards'.[24]

OPC staff outside MTA House in 2009. [OPC photograph]

[23] On 23 September 2009 Attorney-General Robert McClelland released the report of the Access to Justice Taskforce which had been asked to undertake a broad examination of the federal civil justice system, 'A Strategic Framework for Access to Justice in the Federal Civil Justice System'. www.attorneygeneral.gov.au.
[24] Attorney-General Robert McClelland, Announcements, 29 March 2011.

What's in a Name?

Posing the riddle 'What do you call a man who's a legislative drafter?' (answer 'Bill') to attendants at the 2003 CALC conference in Melbourne, Hilary Penfold challenged them to identify contemporary or former drafters with the name. Although the conference was unable to suggest anyone at the time, there were in fact several drafters in OPC's own history who qualified. Bill Fanning worked as a drafter from 1933 to 1966. Bill Cuppaidge (early 1950s), Bill West (late 1950s), Bill Galbraith (recruited from the United Kingdom in 1974) and Barry William Bates (drafting in the late 1960s), could all have been nominated. If 'Reg' (as in regulations) had also been accepted as a legitimate answer to the riddle, only 1950s drafter Derek Reginald Cunningham would have qualified.

On 21 April 1937 Martin Boniwell, as acting Solicitor-General, opened a meeting of the Police Association of the Federal Capital Territory. One item on the agenda was a discussion of the potential for razor gangsters in Canberra. Concerned with criminal gangs using razor blades as weapons, it is unlikely that the members of the Association envisaged the term 'razor gang' being applied to politicians given the task of cutting government spending. Sir Phillip Lynch's 1980 'Review of the Functions of Government and of Public Service Staffing Levels' was the first to be described in this fashion.

Clearer Law

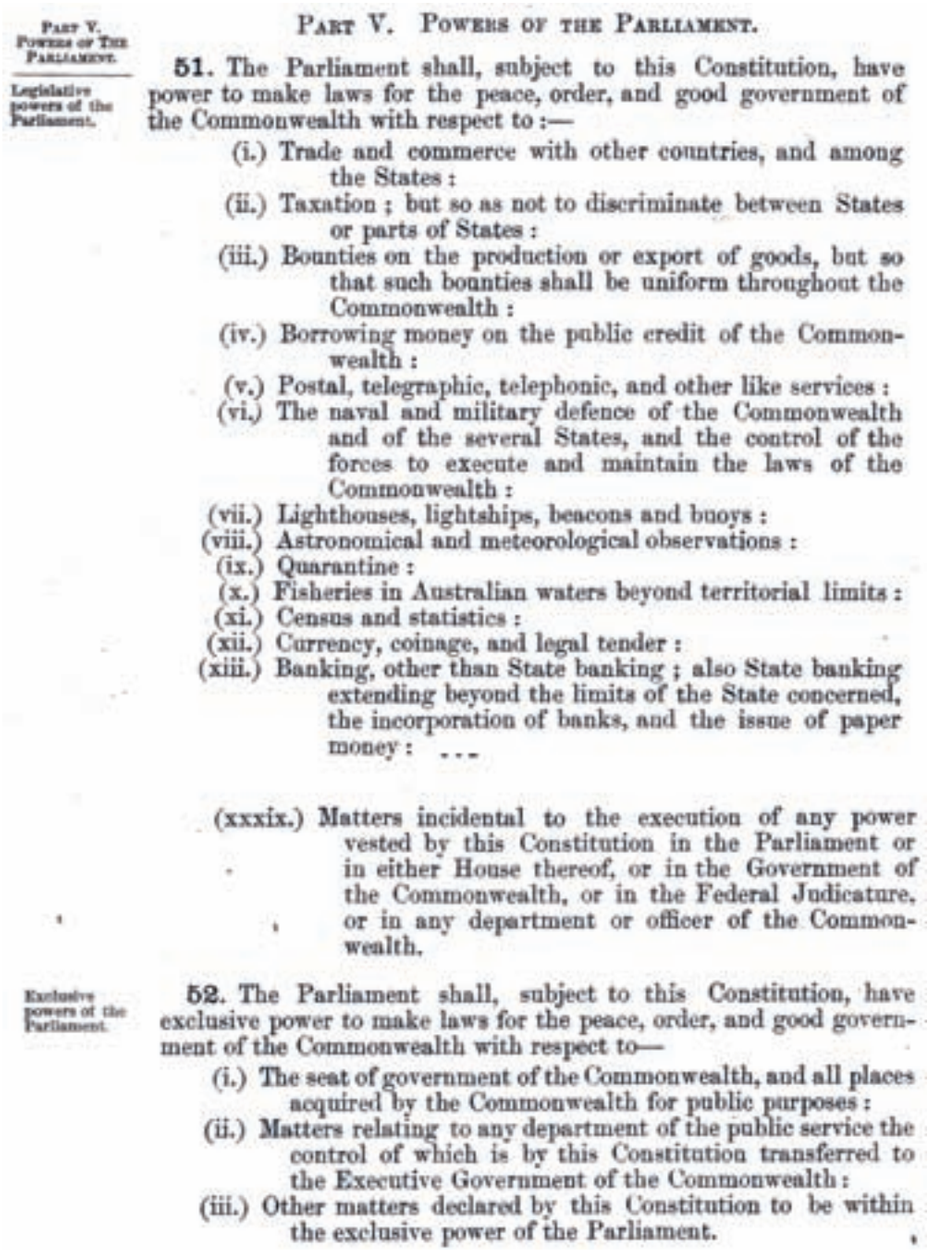
Peace Order and Good Government

Peace, Order and Good Government

Parliamentary drafting was a pivotal role of the Attorney-General's Department from its establishment on 1 January 1901. One hundred and ten years later the function was still fundamental to successive governments' ability to execute their policies. Looking back, twenty-first century drafters could see massive growth in the volume, scope and complexity of legislative subject matter. Public scrutiny had increased in both intensity and immediacy. There had been huge advances in drafting methods, production processes and technological support. At all stages of its history the drafting function had been shaped by its leaders. Under their guidance the drafters had responded to the challenges of their era, developing systems to cope with increasing workloads, and strategies to deal with social and economic development, political change and associated policy reforms. While the central objectives of parliamentary drafting, professional ethics and the traditional work ethos remained essentially the same, drafters had proved themselves flexible and adaptable in dealing with broad-ranging new concepts. Maintained in good order, the Commonwealth statute book reflected clarification of government policies across the decades following Federation, and was testimony to a record of which drafters could be justifiably proud.

Constitutional Framework

Grounded in the Australian Constitution, the contract for Federation in 1901, the Bills drafted for the new Commonwealth Parliament expressed its legislative intent. Providing an essential framework for all government activities, many of the Acts passed remained in place for decades, some for over a century. Amended, replaced, and supplemented, the body of legislation drafted kept government viable. Laws continued to underpin the public service, its personnel and financial management, and all that it administered at various stages in Australia's history. The Commonwealth's drafters applied specialised skills to reflecting government policy in legislation. Although departmental lawyers had multiple functions until the creation of the Parliamentary Drafting Division in late 1948, the drafters' task was always differentiated from that of the policymakers and providers of legal advice. True servants to successive governments, parliamentary drafters worked behind the scenes to give legislative effect to every policy intention. Drafters were always in high demand to elucidate the law – for all of those who passed it, administered it, were subject to it or judged people by it.



PART V. POWERS OF THE PARLIAMENT.

PART V. POWERS OF THE PARLIAMENT.

Legislative powers of the Parliament.

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:—

(i.) Trade and commerce with other countries, and among the States:
(ii.) Taxation; but so as not to discriminate between States or parts of States:
(iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:
(iv.) Borrowing money on the public credit of the Commonwealth:
(v.) Postal, telegraphic, telephonic, and other like services:
(vi.) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:
(vii.) Lighthouses, lightships, beacons and buoys:
(viii.) Astronomical and meteorological observations:
(ix.) Quarantine:
(x.) Fisheries in Australian waters beyond territorial limits:
(xi.) Census and statistics:
(xii.) Currency, coinage, and legal tender:
(xiii.) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money: ...

(xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

Exclusive powers of the Parliament.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

(i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:
(ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth:
(iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

Section 51 of the Australian Constitution set out a long list of the Parliament's powers to make laws for the peace, order and good government of the Commonwealth. Section 52 gave the Commonwealth exclusive powers in some areas.

Untried in 1901, the Constitution remained relatively unchanged by 2011. Subjected to much interpretation in the High Court after 1903, the Constitution was reviewed in several forums during the next century. While many recommendations for change were made, the Constitution could only be amended through a referendum of all eligible Australian voters, with the proposed change agreed by both a majority of voters in a majority of States and by a national majority. Ultimately 44 proposals were put to voters at 19 separate referenda. Proving cautious about altering the Constitution, but willing to do so when an amendment seemed reasonable or right, voters accepted only eight of the proposals for change. Altered social or economic circumstances were generally the catalysts for constitutional change. Amendments related to agreements on State debts; Commonwealth powers to legislate on social services and indigenous affairs; terms of office and casual vacancies in the Senate; participation of Territory voters in referenda; and the retiring age for federal and High Court judges. Proposals perceived to weaken the prevailing system of government were not favourably received. Although there was some greater centralisation of powers through constitutional change, and in legislation passed in cases of national emergency, Australia retained a federal rather than a unitary system of government. Exercised at various levels, legislative, executive and judicial power remained divided between the Commonwealth and State and Territory governments. In two referenda held in November 1999, voters rejected proposals for Australia to become a republic and for a new preamble to be added to the Constitution.

Growing Government

When Parliament first sat in Melbourne on 9 May 1901 there were 36 Senators and 75 Members of the House of Representatives. Before the Provisional Parliament House was opened in Canberra on 9 May 1927, only one more Member (with restricted voting rights and representing the Northern Territory) had been added. Numbers had significantly increased in both chambers (to 76 Senators and 148 Members) by the time Parliament moved into its permanent home from 9 May 1988.

At first, drafters enjoyed direct access to Ministers, who were often located in the same building. Increasing complexity in government and at all levels of public administration – influenced by a growing and more multicultural population, globalisation, incessantly advancing technology and security concerns – put greater physical distance between drafters and the Parliament. Commensurately larger volumes of legislation were subjected to greater regulation and scrutiny. A sophisticated programming and approval process was developed, to ensure that government priorities were addressed, and that all draft legislation received the necessary clearance before introduction. Various parliamentary committees were set up to closely scrutinise proposed legislation, focusing on its effects on parliamentary propriety and individual rights, liberties and obligations. The drafters' fundamental role remained the same: to consult with

instructors, analyse policy and consider constitutional and legal implications before structuring, drafting and, where necessary, amending legislation to give effect to policy as precisely and clearly as possible. Drafters engaged in these tasks from late in the twentieth century needed to be aware of a huge range of factors which were not present in the early decades of the Commonwealth. Consistently, more legislative projects were put forward than were able to be passed by Parliament in a sittings. In addition to the normal work of the Office, drafters were engaged in major projects reviewing complex legislation on subjects such as companies and securities, taxation and migration. Management of the drafting function became both immeasurably more complicated, and far more rigorously and publicly accountable.

Concerned with building government from the ground up, the first Commonwealth drafters faced unique challenges. But even the visionary Robert Garran may have been astonished by the subsequent evolution in the scope and complexity of federal responsibility. In its first full year in 1902 the new Parliament passed 21 Acts, comprising 130 pages of legislation. During the 2009-2010 financial year Commonwealth drafters produced 220 Bills totalling around 9 300 pages. More than the sheer quantity of legislation tested the adaptability of drafters in the interim. The vast array of subject matter dealt with in periods of conflict, depression, economic growth and social change – with science and technology developing throughout – proved that drafting was both a specialised and a wide-ranging skill. While complex bodies of law demanded that some drafters develop a degree of subject specialisation, at different times various drafters needed to come to grips with policies relating to diverse, often difficult and sometimes controversial topics.

Laws were drafted to provide the nation's legislative, administrative and judicial framework; to regulate the economy, national security, taxation, industry, infrastructure, technology, education, health and social services; and to set out the rights and responsibilities of citizens at every stage of life. Indigenous people, immigrants, expectant mothers, children, families, pensioners, people with disabilities, the armed services, peace officers, and boy scouts all received legislative attention. State grants, national debt, drought and depression relief were dealt with, along with policies relating to beaches, fishing grounds, submerged lands, sea routes, inland waterways and the Antarctic. Levies, bounties and export provisions were applied to products ranging from laying chickens to hops, tobacco, rabbit skins, canvas, copper, pearl shells, bed sheeting, refrigeration compressors and cellulose acetate flakes. Bills pertaining to the 1919 epidemic of pneumonic influenza, tuberculosis, national fitness and AIDS were drafted, as were those dealing with geophysical surveys, solar observation and space exploration. Many policies given legislative effect were in areas which could not possibly have been anticipated by the framers of the Constitution, or early Commonwealth drafters. John Latham's claim to have personally supervised the drafting of every Bill submitted to Parliament when he first became Attorney-General in 1935 attracted some

astounded and envious comment from his counterpart at the turn of the century, Daryl Williams.[1] The Attorney-General's workload between 1996 and 2003 included supervising passage of the Act which established the Australian Government Solicitor as a separate statutory authority, the *Electronic Transactions Act 1999*, the *Copyright Amendment (Digital Agenda) Act 2000* and a substantial amount of national security legislation. OPC was also heavily involved in the development of the momentous cooperative corporations law package drafted in 2001.

Commonwealth Laws A to Z

Legislation drafted in the 110 years following Federation related to a vast array of subjects. It included, but was not confined to, laws to do with:

affirmative action, the Antarctic, appropriation, arbitration, art, atomic energy, audit, aviation, banking, bankruptcy, black-marketing, bounties, broadcasting, building, censorship, census, childcare, citizenship, climate, coal, coats of arms, compensation, conscription, constitutional alteration, copyright, corporations, courts, crime, customs, daylight saving, death, defence, digital agenda, diplomacy, discrimination, disease, divorce, drugs, education, elections, electricity, electronic commerce, employment, enemy aliens, entertainment, environmental issues, espionage, evidence, excise, explosives, exports, extradition, families, finance, firearms, fishing flags, flora and fauna, forestry, fuel, the Geneva Convention, genocide, geography, gift duty, global warming, gold, government institutions, guns, health, housing, immigration, indigenous affairs, industries, insolvency, insurance, international matters, the internet, invalids, judicial matters, the judiciary, juries, kangaroos, King Island, kinship, land, land rights, levies, lighthouses, livestock, loans, marriage, maternity, manufacturing, mediation, medical benefits, medicine, mining, money, music, nationality, national security, native title, navigation, nursing homes, observatories, oil, Olympic insignia, ozone protection, Parliament, pensions, pharmaceuticals, pollution, postage, primary products, prisons, psychotropic substances, the public service, quarantine, quarries, railways, referenda, repatriation, roads, royal style and titles, satellites, science, shipping, social services, space, state grants, statistics, submarines, subsidies, superannuation, supply, tariffs, taxation, telecommunications, television, territories, terrorism, trade, transport, uranium, the United Nations, universities, unlawful associations, veterans' affairs, vineyards, war, war crimes, war precautions, water, weights and measures, welfare, whaling, wheat, wireless telegraphy, wool, workplace relations, x-rays, x-rated movies**,** young people, youth employment and a zoological museum.

[1] Attorney-General Daryl Williams, Address to the 31st Australian Legal Convention, 10 October 1999.

External Scrutiny

Early Attorneys-General, and the drafters of the time, did not have to deal with the intense external scrutiny of legislation experienced by their later counterparts. Newspapers, pamphlets and the face-to-face speechmaking which featured in politics at the beginning of the twentieth century were largely supplanted by radio and then television. Parliamentary proceedings were broadcast on radio from 1946 and televised from 1991, with access to certain proceedings for still photography allowed from 1992. Continual advances in electronic communications and digital technology meant that Parliament, and draft legislation, was open to ever-increasing media attention and public scrutiny. With their debates streamed live on the internet, twenty-first century parliamentarians were also in much closer contact with their constituents through email, websites and even social networking pages. A greater focus on consultation saw a growing preference for exposing draft legislation (including parliamentary amendments) for public comment before its introduction into Parliament, a process which added to the workload and responsibilities of drafters. More diverse catalysts for legislative change also emerged with the revolution in communications. Ministers, party platforms, lobbyists, special interest groups, ministerial or administrative staff, committees reviewing aspects of the law or government administration, government bodies, non-government organisations and dissatisfied voters, individually or in various combinations, all generated proposals for legislative change. Any practical problems or omissions in implemented laws were also likely to be noticed more quickly and scrutinised more widely, and redress sought more immediately.

Drafters always needed to be mindful of official legal opinion and judicial interpretation of legislation. Often widely publicised, judicial decisions which contradicted assumed interpretations of laws or threatened implementation of government policies led to community uncertainty and demanded a legislative response. The ever-expanding body of opinions and interpretation, combined with additional complexity in the range of subject matter dealt with in Bills, greatly increased the scope of information drafters needed to be aware of in the course of their work. This aspect of their role was more pronounced after explanatory material accompanying Bills became the norm rather than the exception in 1982, and a section relating to material which might be used in conjunction with a statute being interpreted in courts was added to the Acts Interpretation Act in 1984.

Judging Judgements

Addressing a conference in Canberra in 1994, First Parliamentary Counsel Hilary Penfold made some forceful points about 'unhelpful judicial pronouncements' and the consequent difficulties of drafting:

> *It must be said that, from a drafter's point of view at least, judicial approaches to the construction of legislation are sometimes unhelpful. Some of them are no better than veiled personal abuse. A current member of the High Court was recently reported as saying that a statutory provision 'looked as though it had been drafted by a social worker rather than a lawyer'. Some of them are entirely unconstructive. Some years ago a member of the High Court referred to the numbering system used in Commonwealth legislation as 'barbaric'. Not surprisingly, we weren't able to find any guidance in this comment, and our numbering system remains the same.*
>
> *More usually, however, judicial comments are unhelpful either because of the way the judiciary operates or because of inherent difficulties in the drafting of legislation. The difficulties of extracting clear reasons for a decision from several separate judgments, written in several different styles by judges whose positions as members of the majority or the minority might shift in the course of a single judgement from issue to issue (and who often don't even address the same issues in the same order or even under the same names) affect most lawyers, not only legislative drafters.*
>
> *On a personal level, drafters may find these difficulties more frustrating than other lawyers do. Now that it is generally accepted that judges make law, questions about the form in which judges make law cannot be ignored. Presumably it would not be acceptable for drafting offices to produce two or three or even seven different versions of each Bill, drafted by different drafters, which could all be enacted by the Parliament and which, taken together, would form the law on the particular subject. Should it remain acceptable for judges to make law in this fashion?*
>
> *Leaving that issue aside, it is still arguable that the problems with using case law are magnified as far as the drafter is concerned. If we as drafters are to make any constructive use of judicial comments (rather than treating them only as marking the boundaries beyond which we cannot safely proceed), we need to be able to use whatever general principles can be extracted as a basis for deciding the exact words to be used in legislation. We do not have the judicial luxury of giving reasons or of being able to set out at length all the matters we considered in reaching a particular form for a legislative statement. We do not have scope for explaining and qualifying our legislative statements at length. We don't even have the privilege of being able to set out the background to our laws.*

Bearing in mind the point made earlier about the time usually available for drafting legislation, and the material quoted earlier about the inherent difficulties in using language to communicate, it will be apparent that the drafter faces a difficult task in choosing words and legislative structures with which to attempt to convey the intentions of the sponsors of legislation. Those intentions need to be conveyed to a variety of different audiences, each individual member of which brings to the process of interpretation a unique set of preconceptions, life experiences and understanding of language. Without the opportunity to sit down individually with each reader and explain the legislation personally, the drafter is bound to fail in the task of conveying the same message to all his or her readers. At best, the drafter can hope to convey a message which is similar enough (for practical purposes) to enough of the readers (ideally including any judges called on to interpret the legislation). Unfortunately, these difficulties often appear to be overlooked by judicial interpreters of legislation.

Even when judges take the major step of recognising the conflicting aims inherent in the writing of legislation, they don't seem to be any more successful than the rest of us in resolving that conflict. In Blunn v Cleaver, the Federal Court made some perceptive observations about the difficulties of attempting to improve the accessibility of legislation, but finished by throwing up its collective hands:

> *It is difficult to know what can be done about [the problem of the complexity of legislation]. As the [Senate Standing Committee on Legal and Constitutional Affairs] remarked, the increasingly complex society in which we all live very often demands that legislation be expressed in a complex form. That is the factor which will so often operate to prevent simplicity in legislative drafting.*

[Hilary Penfold, *The Genesis of Laws*. Paper prepared for the 'Courts in a Representative Democracy' conference, presented by the Australian Institute of Judicial Administration, the Law Council of Australia and the Constitutional Centenary Foundation. Canberra, 11-13 November 1994.]

Evolutionary Drafting

Those who worked in the Office of Parliamentary Counsel from its creation as a separate, specialised agency in June 1970 had several things in common with the first Commonwealth parliamentary drafters. Producing legislation in a timely manner to meet the priorities of the government of the day remained the primary objective. The Office's budget outcome as expressed in 2011 would have been equally applicable in 1901:

> *Laws that give legal effect to the intended policy and form a coherent and readable body of Commonwealth legislation through the drafting of Bills and amendments for passage by the Commonwealth Parliament.*

Ethical considerations were still paramount. Even when dealing with politically controversial laws, drafters were still required to complete projects assigned to them to the best of their ability. Both the original Attorney-General's Department and OPC were comparatively small organisations principally staffed with legal professionals – although, commensurate with the volume and complexity of work, numbers rose from one part-time drafter at the beginning of 1901 to a contingent of 32 by 1 January 2011. Drafting was generally tightly resourced, with no more drafters than were needed at any stage, and often not enough to draft all the Bills that some parliamentarians would have liked. High-quality lawyers were always sought after. Robert Garran handpicked his team at the beginning. The difficulty of drafting work, combined with comparatively unattractive employment conditions in the later years of the Parliamentary Drafting Division, meant that the stringent recruitment criteria applied in that era were often impossible to meet. Drafting resources were gravely depleted in the 1960s. Gradually redressed after the creation of OPC, resourcing problems were not fully resolved until the 1990s when deliberate recruitment, training and retention strategies to attract people with the necessary professional and technical skills, and to keep them in a career in drafting, were put in place.

Learning from Experience

During debate on the Bankruptcy Bill in April 1924, Western Australian Senator Edmund Drake-Brockman commented on the need to continually update laws, saying:

> *'Furniture, china, and wine improve with age, but legislation can often be improved as a result of experience'.*

[Senate 1924, *Debates*, vol. 106, p. 274.]

Drafting style and methods evolved continuously from Federation. A quest for simpler law prevailed at various times, albeit relative to contemporary legal and literary standards. Robert Garran's own distinctive, clear technique embellished the first pages of the statute book. While Australia's drafting style developed from this benchmark, much was borrowed from traditional English law and inherited legal jargon. Simplicity proved an elusive goal with the increasing quantity, breadth and complexity of legislation demanded of drafters. Black-letter style was entrenched in the Parliamentary Drafting Division under the leadership of John Ewens. While he strictly discouraged the use of unnecessary antiquated words, the objective of precision ruled over readability. Frustrated by these restrictions, some of the drafters themselves advocated change, even before the 1980s campaign by vocal critics lobbying for simpler language in laws. From this time OPC adopted a deliberately proactive approach, implementing innovative procedures to ensure continual improvement in simplifying drafting style and enhancing readability.

Painstakingly manual for many decades, the preparation of draft legislation became increasingly reliant on the use of computer technology towards the end of the twentieth century. Tedious and time-consuming poring through volumes of documents and paste-ups was largely replaced by instant access to electronic databases and legal research on the internet. Advances in software facilitated ongoing improvements to Bill formats and readability. Sophisticated word processing capability enabled highly efficient preparation, printing and amendment of legislation. Customised templates and macros simplified layout and pre-editorial checking. Computerised systems were designed to manage the legislative program and monitor the status of Bills. Secure electronic transfer of drafts largely superseded the protracted, safe-hand arrangements instituted in earlier years. The internet provided the means to effectively disseminate information needed by OPC's clients. In-house communication also benefited from the use of email and the Office intranet. Comprehensive and up-to-date manuals, drafting directions, IT notes, office procedural circulars, managerial announcements and other relevant items of information were made immediately available to staff. Earlier drafters, who relied on much more basic tools, would undoubtedly have been bemused by both the range and volume of drafting aids available to their twenty-first century counterparts, and the means of accessing this material.

Assistance to drafters in every period had a common goal of accuracy, in both the intent and content of Bills. Critical to ensuring that policy intentions were accurately reflected in draft legislation, the drafters' communication with instructors took various forms at different times. With Australia's legislative framework established, and government becoming larger and more complicated, there was no longer the facility for such personal exchange between departments and Ministers, and communication by correspondence became the norm. In a formalised and drawn-out process the instructors wrote instructions, the drafters replied asking questions and the answers came back by letter. While all this gave drafters useful time to think about the draft, interaction with instructors became more effective as technology improved, and as more emphasis began to be placed on consultation.

Greater use of telephones, conference calls, email and face-to-face meetings between everyone involved in clarifying the policy behind a Bill allowed for a more immediate and comprehensive exchange of information – and increased the likelihood of the intended policy being encapsulated in the legislation. From the 1990s OPC also put concerted effort into providing more practical assistance and training to its clients, primarily in the form of a guide to working with the Office and regular Legislation Process Courses for instructing agencies.

No matter what its size or subject, every Commonwealth Bill received individual attention and followed a unique path, from instructions through drafting to quality assurance processes, prior to its printing and introduction into Parliament. Early drafters checked their own work, perhaps with the help of an assistant, and it was often the drafter who delivered the Bill to the printer. The very first Bills went directly to the Attorney-General for a final check before submission to Parliament. A practice was developed of at least two drafters reading every Bill during several editorial checking stages. As workloads and complexity in legislation increased, technological aids were developed, to maintain consistency in format and style, and high standards in the presentation of Bills. While automated checking improved the speed, accuracy and flexibility of certain processes, human input remained crucial. OPC's intensively trained editorial staff provided professional support to drafting teams, who were always ultimately responsible for their own work.

Sensitised as he was by the influence of women – his resolute mother, his five older sisters and his gracious and generous wife – Robert Garran may well have approved of the advent of female drafters. However, Commonwealth drafting was an all-male domain for over 50 years. Although the first two women were appointed to the Parliamentary Drafting Division in the early 1950s, neither stayed long. Both brilliant law graduates, they soon married colleagues in the Attorney-General's Department, one a fellow drafter, and were deemed to have resigned under section 49 of the Public Service Act.

Few other women contributed to the development of the Commonwealth statute book until the latter half of the 1970s. In gradually increasing numbers after that, more women were attracted to stay by improved employment policies in OPC in the 1990s. While the first female head of the Office was appointed in 1993, male and female drafters were not generally equally represented in OPC until around 2001. The term 'draftsman' was not officially dropped until the passage of the *Parliamentary Counsel Act 1970*, and its use persisted in some quarters long after that. Speaking at the close of the Parliamentary Counsel's Committee drafting forum in New Zealand in February 2000, First Parliamentary Counsel Hilary Penfold noted:

> *This is the first drafting conference I've been to where everyone says 'drafter', and no-one's been stumbling over 'draftsman' and then correcting themselves to 'draftsperson'. That is no doubt related (although I'm not sure about cause and effect) to the gratifying fact that we seem to have almost an equal representation of men and women among forum participants.*

Top Billing

Leadership of the parliamentary drafting contingent, whatever its size and form at various stages, was crucial from the beginning. Robert Garran's impressive talents in many areas – including his intellectual abilities, constitutional knowledge and consummate skill as a drafter – inspired generations of those who followed him. Motivational too was his personal commitment to making Federation, and Canberra, thrive. Following the Parliament, the Attorney-General's Department, after the first few weeks in Sydney, moved to Melbourne until official government headquarters were established in 1927. Among the first public servants to relocate to Canberra, the drafters of the time were notable not only for their contributions to the ongoing development of the statute book but to that of the new national capital.

A Balancing Act

Musing on the problems of drafting, Robert Garran wrote that drafters could not claim to work to please themselves, stating:

> *The draftsman of statute law, and especially of constitutions, has to satisfy more masters than one. To begin with, one of the fundamental maxims is that everyone is supposed to know the law, therefore it behoves the draftsman to make the law so simple that everyone can understand it.*
>
> *There is another fundamental maxim that the law must be certain, and therefore it behoves the draftsman to make it technical enough for courts to be satisfied.*
>
> *But it is not always easy to combine the two – to be simple and technical in one breath.*
>
> [Prosper the Commonwealth, p. 407.]

Garran set a record term of just over 31 years as Parliamentary Draftsman. His protégée and 'right-hand', the indefatigable George Knowles, steered the Department and the drafting function through an exceptionally trying 14 years, during the Great Depression and the Second World War. The inaugural head of the Parliamentary Drafting Division created in 1948, Martin Boniwell (who was in charge for less than three years) was tasked with establishing drafting as a discrete function in the Department.

John Ewens was the last to hold the position designated as 'Parliamentary Draftsman'. At the helm for over 23 years, he was supported throughout this entire period by a loyal deputy, Charles Comans. Ewens put his own disciplined stamp on drafting style, imposing rigorous standards on the drafters. Passionate about his craft and the

importance of the function, he was largely responsible for the creation of the Office of Parliamentary Counsel as a separate professional agency from 1970. He served as the inaugural First Parliamentary Counsel until his retirement at the end of 1972.

Successive First Parliamentary Counsel, Charles Comans and Bronte Quayle served shorter terms of around four years each. Trained in the traditions embedded by Ewens, they had to deal with dramatically increased workloads and rapidly advancing complexity in government. Shedding of subordinate legislation and drafting work for the Territories in the 1970s made OPC even more specialised – it kept responsibility for the drafting solely of Bills. Introduction of the 'pairs' system under the Comans-Quayle leadership team was a significant and lasting change. Becoming fundamental to the operation of the Office, the system provided intensive and high quality training to new drafters early in their careers.

Contact with other Australasian drafting offices was enhanced after the establishment of the Parliamentary Counsel's Committee in 1970. Geoff Kolts (also Ewens-trained) was First Parliamentary Counsel for over five years in the early 1980s. Under his proactive leadership, the Office became increasingly involved with international colleagues. Drafters took advantage of overseas exchange and development opportunities, and became keen contributors to the Commonwealth Association of Legislative Counsel (CALC) after its formation in 1983. OPC provided the inaugural secretariat for CALC and, later, two of its Presidents.

Appointed in July 1986, Ian Turnbull, the first FPC to complete the statutory seven-year term, bore the brunt of defending Commonwealth drafting style against growing public criticism. Leading the push for plainer language and simpler drafting from within the Office he also strove to preserve the high standards and best elements of the traditional style. From this period, because of the expanding range of governance responsibilities devolved to agencies, First Parliamentary Counsel were expected to be not just excellent drafters but outstanding managers. Second Parliamentary Counsel were also given enhanced roles in the management of the Office. Increasingly, attention was paid to the wellbeing of Office staff, as well that of the statute book. By the mid-1990s OPC had assumed greater responsibility for the maintenance and internal consistency of the statute book as a whole.

Led by Hilary Penfold from 1993 to 2004, OPC made extensive improvements in both drafting and management. Plainer language, readability, a programming priority system and a new format for Bills were all developed. Corporate services were upgraded, the Office restructured, employment conditions enhanced and attention focused on recruitment, retention and training strategies for drafters. As Hilary Penfold's lieutenant and successor, Peter Quiggin drove the technological transformation which put OPC in the forefront of drafting offices in Australia and overseas. He developed and maintained

an Office environment which encouraged excellence and innovation in drafting, and in which support for all aspects of the production of legislation was paramount. Electronically formatted, the statute book became more consistent in layout, format and style across a high volume and wide range of legislation, easier to publish and more readily accessible to the public. Showing confidence in the Office's ability to cope with ongoing drafting challenges, the Government reappointed Peter Quiggin as First Parliamentary Counsel in 2011.

A Job Well Done

Acknowledging the contribution of OPC staff, past and present, at the celebration of the Office's fortieth anniversary on 12 June 2010, First Parliamentary Counsel Peter Quiggin passed on positive comments received from many respondents to the recently conducted survey of users of legislation. Quoting the respondent who had written:

> *'Keep it up guys, you are seriously the most competent agency in the whole of the Commonwealth'*

he echoed the sentiments of another who had said

> *'Long live OPC'.*

A Hard Act to Follow

Reviewing their 110-year history in 2011, parliamentary drafters and those who supported the drafting function had much to be proud of. Drafting of legislation in a timely and effective manner had proved crucial to efficient implementation of government policies since Federation. Honouring the democratic and ethical traditions of their profession, drafters had endeavoured to maintain a balance between the competing interests of all those involved with or affected by legislation. Continually making improvements in structure and style, they had also managed to achieve a high degree of consistency across the consolidated statute book. Notable contributors to their local community throughout the decades, drafters and support staff also developed a high degree of cohesion, consultation and constructive exchange within the Office. Cooperative working relationships had been built with colleagues in Australian and international arenas. In increasingly complex economic and social contexts OPC had successfully juggled demands for both efficiency and the provision of effective public service. Every achievement had one element in common. All depended on the effort and integrity of people, working individually and in constructive partnership with one another to achieve their common goal.

OPC Staff 2011. [OPC Photograph]

Parliamentary Draftsmen and First Parliamentary Counsel 1901-2011

Sir Robert Randolph Garran GCMG QC

1867–1957

First Commonwealth Parliamentary Draftsman 1901–1932

Born at 147 Phillip Street, Sydney on 10 February 1867, Robert Randolph Garran was the youngest of the six children, and only son, of Andrew Garran and Mary, née Sabine. Educated at Sydney Grammar School and the University of Sydney, he graduated with a Bachelor of Arts in 1888. For his Master of Arts in 1889 he specialised in political philosophy and federal government, finishing with first-class honours and the University Medal in the School of Philosophy. As was the practice at the time, he studied for law examinations conducted by the Barristers Admissions Board and was admitted to the New South Wales Bar in 1890. Following his early work in a solicitor's office and as an associate to Judge William Windeyer he began practice, expecting to 'lead a quiet and blameless life as an Equity barrister'.[1]

Influenced by his father, then editor of the *Sydney Morning Herald* and a 'convinced federalist', Robert Garran took a keen interest in the National Australasian Convention. He attended the debates held in Sydney in 1891, becoming one of Edmund Barton's 'young disciples' and a member of the Sydney Federation League. Garran was at the Corowa Conference in 1893 and in the room for the impromptu meeting which drew up the 'Corowa Plan' – that each colony should pass legislation needed to establish a Federal Constitution and vote on the measure through a referendum. Always a true 'public servant' rather than a politician, he took behind-the-scenes roles in federal conventions in Bathurst in 1896 and Adelaide in 1897. By then a 'junior authority' on federation through his sold-out handbook *The Coming Commonwealth* (based on a series of university lectures which attracted no students), Garran was assigned as secretary to the drafting committee appointed by the 1897 Australasian Federal Convention. A proactive member of the colonial group pushing for a 'yes' vote during the 1898 and 1899 referendum campaigns, he was invited by Sir John Quick to

[1] Robert Garran's memoirs, published after his death as *Prosper the Commonwealth*.

collaborate on a commentary on the Constitution. Garran described his part in the production of this definitive work as being 'the junior partner of a steam-roller', noting that his efforts to prune back the size of the tome were successful only by stealth.

At Federation on 1 January 1901 Robert Garran, aged 33, was appointed Secretary to the Attorney-General's Department and Parliamentary Draftsman. That day he was made a Companion of the Order of St Michael and St George (CMG) in recognition of his services to the federal movement. On 7 April 1902 Garran and British-born schoolteacher Hilda Robson were married at Saint John's Church of England in Darlinghurst. The couple later had four sons – Richard (born in 1903), John (1905), Andrew (1906) and Isham Peter (1910). For the next three decades Garran set high standards for both public service and for drafting. He drafted the legislation which established government infrastructure and laid the legal foundations of the Commonwealth. Enthusiastic about this work he revelled in the opportunity to set drafting precedents, imposing a distinctive style on the new Commonwealth statute book with his preference for simplifying legislation wherever possible. Believing the Constitution to be a living document requiring periodic review, and conscious of its interaction with politics, he was disappointed by rigid court interpretations of various clauses and by electoral resistance to constitutional change. Farsighted, tolerant and decisive, he was receptive to wide-ranging ideas and options for resolving issues. Meticulous yet comfortable with the vernacular, his written style was unaffected, quick, capable and lucid.

To have Robert Garran at his Minister's elbow with a fountain pen, a blank sheet of paper and the War Precautions Act was said to be the best way to govern Australia during the regulation-laden years of the First World War. In 1916 Garran was appointed Solicitor-General to assist Prime Minister and Attorney-General, William Morris Hughes, with his many responsibilities. Knighted in 1917, his work as Solicitor-General was recognised by his appointment as Knight Commander of the Order of St Michael and St George (KCMG) in 1920. Sir Robert also contributed on the international front, from 1918 participating in several major conferences dealing with post-war peace and cooperation. A member of the Australian delegation attending the Eleventh Assembly of the League of Nations in Geneva in 1930, he was made chairman of the drafting committee at the subsequent Imperial Conference in London. Retiring from the public service at the mandatory age of 65 on 9 February 1932 he took silk in New South Wales and resumed some private practice, mostly providing advisory opinions and doing work associated with government matters. In recognition of his services to the Commonwealth he was awarded the Knight Grand Cross (GCMG) in 1937.

Remaining active in official, academic and church affairs throughout his long life, Sir Robert's contributions to Canberra were notably significant. His support for Federation extended to the establishment of a national capital. He led by wholehearted example,

migrating from Melbourne to Canberra in the first transfer of public servants in August 1927 and continuing to live in the rudimentary city after his retirement. He worked on wide-ranging official and personal levels to make resettlement as easy as possible for others. Sir Robert and Lady Garran were renowned for their generous hospitality and support for every worthy cause. Even-tempered and encouraging, Sir Robert put untiring effort into promoting education, the arts and social activities in the new capital. He participated in choirs and orchestras, was a keen gardener and played cricket, golf and tennis. At 193 centimetres tall he was a formidable tennis player, and he captained the departmental team. Foundation president of the Rotary Club of Canberra he later served as district governor and carried out a goodwill lecture tour of the United States and Canada. Most farsighted and of major importance was his constant work towards the establishment of a truly national university in Canberra. His Honorary Doctorate of Laws was the first degree conferred by the Australian National University, on 7 December 1951, and the inaugural lecture for the University's Robert Garran Chair of Law the last formal ceremony he attended.

Sir Robert always put his learning to constructive ends. He read extensively in several languages, including Latin and Greek, and skilfully translated songs written by German poets and composers. His literary craftsmanship had continual creative output in legal opinions, drafting, his books, articles for journals, poetry, hymns and letters to the press – late in life he confessed to satirising anti-federalists in anonymous prose in newspapers prior to Federation. His memoirs, completed a few days before his death, were published posthumously. The book's title, *Prosper the Commonwealth*, was taken from the last line of a Federation hymn he wrote. Outliving his widely-mourned wife by almost 21 years, Sir Robert Garran died on 11 January 1957, just before his ninetieth birthday. A state funeral at Saint John's Anglican Church in Reid, unprecedented for a career public servant, recognised his significance to the nation and his remarkable achievements on all levels. Revered as a dedicated and honourable elder statesman, he was a legend in his own lifetime.

Gargantuan Garran

Secretary to the Attorney-General's Department and Solicitor-General, Professor Kenneth Bailey, wrote in memory of Sir Robert Garran:

> *It is hard to write about Sir Robert Garran otherwise than in superlatives. There was in fact nothing 'average' about him. In ability, in character, in attainments, even in length of body and of life, he was altogether exceptional. … Both lawyer and a man of letters [he] could have made a notable contribution in either sphere to the life of Australia. His main contribution, in fact, was made as a lawyer. Yet there was no true dichotomy. Garran was not two men, but one. Perhaps it was no accident that he so much enjoyed the part of his work which was done as Parliamentary Draftsman. He adopted with enthusiasm ideas, then very new, for modernising and simplifying the drafting of legislation which gave to the statute-book of the Commonwealth a distinctive character. Drafting provided a continual outlet for his skill as a literary craftsman.*

[Article reprinted from *The Australian Quarterly* in the Attorney-General's Department *Monthly Bulletin for Legal Officers*, 1957.]

Also described by Professor Bailey as a man of 'innate modesty' with an 'unconquerable sense of humour' Sir Robert once told a story about how his height had distinguished him on social occasions in his youth. Professor Tom Inglis Moore recalled the conversation which took place not long before Sir Robert's death:

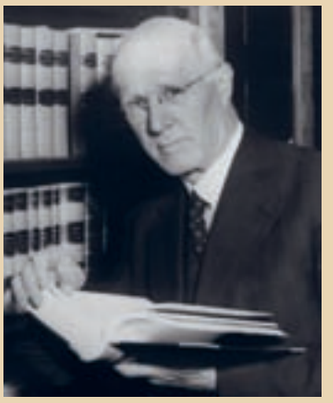
> *I'd just been reading in the Bulletin where it mentioned that as a young man, as Bob Garran, he had been quite a socialite and very fond of dances in Sydney, so I mentioned this to Sir Robert and said I'd been seeing about his gay youth and the dances. Sir Robert smiled and said 'Oh yes'. He said 'Of course those were the days of Programme dances. You went to a girl and you booked up a particular dance and you arranged to meet', and he said, 'I was very popular because the men would go along and book a dance with a girl and would say "I will meet you by Robert Garran for the fifth dance" and they would come then and meet by me just like, you know, "I will meet you by the Post Office clock, the railway clock", because with my height I towered above everybody else and I was a very convenient meeting place … for dances in Sydney'.*

[Recounted in an Australian Broadcasting Commission radio program, 'Commonwealth Public Servant Number One', A biographical feature made and narrated by John Thompson.]

Sir George Shaw Knowles CBE

1882–1947

Parliamentary Draftsman 1932–1946



George Shaw Knowles was born on 14 March 1882 in Church Street, Toowong, Brisbane. The eldest son of English-born postmaster George Hopley Knowles and Mary (née Cocks), he had a younger sister and brother. Knowles attended Warwick West Boys' School, then Toowoomba Grammar School as a day student on a three-year scholarship from 1894. At age 16 he sat the Queensland Public Service examination and was appointed as a clerk. Working first with the Chief Inspector of Stock and Registrar of Brands, he studied accountancy in evening classes at the Brisbane Technical College and attained a position in the state Auditor-General's Department. Mindful of career prospects enhanced by a university education, Knowles sat the Victorian matriculation examination in 1901 and transferred to the Commonwealth Audit Office in Melbourne on 1 September 1902. By then he was engaged to Eleanor (Ella) Bennett – the daughter of close family friends she had been born in the house next door. Both families were strict Wesleyan Methodists, fostering in Knowles a strong commitment to his family, community and nation.

Commencing evening studies at the University of Melbourne in 1903, Knowles transferred to a job in the Patents Office, in the Department of Trade and Customs, in 1904. Inspired by Robert Garran to stay in Melbourne Knowles was highly motivated – both by a desire to move into the Attorney-General's Department before it grew too large and his career path was impeded by younger men, and by his plans for marriage. Promoted within Patents in 1906, and then securing a newly created Clerk E (Professional Division) position in the Attorney-General's Department on 1 November 1907, he completed two degrees part-time while working in demanding jobs which often involved substantial overtime. Learning Greek vocabulary en route to the office by bike, a book-rest fitted across the handlebars, Knowles graduated with a Bachelor and Master of Laws (1907 and 1908) and a Bachelor and Master of Arts (1910 and 1912), finishing with final honours in the schools of logic, philosophy and law. He used the same bike for weekend excursions around Victoria – once riding 110 kilometres from

Bright to Omeo via Mount Hotham. Knowles and Ella were married on 10 November 1908 at the Methodist Church in Albert Street, Brisbane.

Elevated to Clerk Class D on 1 October 1910, Knowles transferred to the role of Secretary to Representatives of the Government in the Senate, which he held until a two-level promotion to Chief Clerk (termed Assistant Secretary from 1921) and Assistant Parliamentary Draftsman in June 1913. Garran later wrote of this comparatively rapid career advancement that Knowles 'rocketed up so fast that in accord with the parsimonious Public Service habits of that day the salary he received was usually about two moves behind that of the position which he was holding'.[2] Garran's deputy for over 18 years, Knowles was also a member of the Patent Attorney's Examination Board from 1915. He served as the first Secretary to the Commonwealth Practitioners Board from 1909-1911, and again from 1918-1932. In 1913 he produced an annotated compilation of the first consolidation of Commonwealth Acts. Resultant expertise in the intricacies of Commonwealth legislation greatly facilitated his admission as a barrister and solicitor of the High Court in 1916. He was admitted in the Supreme Court of Victoria in 1927.

Involved in international work throughout his career, Knowles was legal adviser to the Australian delegation attending the League of Nations assemblies in Geneva in 1920 and 1924, and later the 1937 Imperial Conference in London. He was Australian secretary in the British Empire delegation to the Conference on the Limitations of Armaments in Washington in 1921-1922. Frequently overseas, he once worked through a succession of eight winters, managing to be home for just one summer.

Privy to ministerial deliberations behind the choice of Canberra as the nation's capital, Knowles first visited the construction site for the city in 1919, and was there during the first Cabinet meeting at Yarralumla on 30 January 1924. Preparatory to the move of the public service from Melbourne, he was appointed Chairman of the committee formed 'for the purpose of watching the interests of officers in connexion with all matters relating to their transfer to and residence in Canberra'.

Committed to the capital, but conscious of the sacrifices inherent in moving a home from Melbourne, Knowles went into substantial debt to preserve his own family's lifestyle, and to ensure that his daughter and three young sons were not disadvantaged by the move. Planning thoroughly for their arrival in Canberra early in 1928, Knowles built 'Ellanshaw' in Mugga Way and threw his energies into the development of the city. He made significant contributions to the Methodist Church community and to the establishment and development of the Canberra University College – later the Australian National University. An enthusiastic Rotarian, he also played grade cricket, as

[2] R Garran, *Prosper the Commonwealth*, p.152.

wicket-keeper for Manuka for some years, regular tennis and weekend golf at the Royal Canberra Golf Club – then located in Acton on the banks of the Molonglo River.

Recognised for his wartime work with an Order of the British Empire (OBE) in 1919, Knowles was made a Commander of the Order (CBE) for his contribution as a draftsman in 1928. On 10 February 1932 he succeeded Sir Robert Garran as Secretary to the Attorney-General's Department, Parliamentary Draftsman and Solicitor-General. He also served as a member of the National Debt Commission from this time. During the stressful period of the Second World War he dealt with the growing size and complexity of his multifaceted workload in his usual quiet and modest manner – sustained by brief naps and relentless after-hours paperwork. Much additional effort went into the completion in 1936 of his major written work on the Australian Constitution, which incorporated notes on relevant judicial decisions. Renowned for his constitutional expertise, he was appreciated by Ministers for his wise and tactful advice on wide-ranging legal matters.

Knighted in January 1939, Sir George left Canberra in mid-1946 when he was appointed Australia's first High Commissioner to South Africa. At age 65 he died there from post-surgical complications on 22 November 1947 – the sixth anniversary of the death in action of his fighter-pilot second son, Lindsay. He was survived by his wife, who lived to be 100 years old. Sir George and Lady Knowles were ultimately buried in the same grave in the Methodist section of the Woden cemetery in Canberra.

Motoring

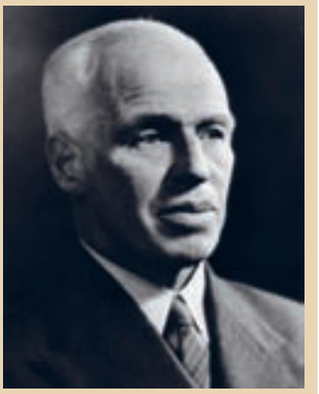
Sir George Knowles had a love of cars and of driving holidays. His youngest son, Mervyn Knowles, recalled the family's travels in the 1920s:

> *While they were in America in 1921-22 my parents ordered their first car–it was a 1923 Buick four cylinder–I believe the only four cylinder ever made by Buick and it came with all the 'extras'. These included a removable sedan top (called a Rex top) which provided better protection in winter than the general soft top, a windshield for the backseat passengers when the hood was off or the side curtains not erected–and it was complete with a waterproof canvas skirt in case of a shower. A floor heater was also included in the back for a cosy ride. The heat was provided by diverting some of the hot exhaust gases through a small pipe element. Over its fourteen years of active life we covered some 120,000 miles and traversed all of the coastal road (now Highway 1) from Mount Gambier in South Australia to Gympie in Queensland and much of the inland roads in the eastern States as well, without mentioning a month touring Tasmania.*
>
> *All this would not have been possible without the trailer. One of father's better efforts, it was, basically, a luggage trailer that exploded to form a room six feet by ten feet (and three feet above the ground) with a six foot ceiling. The poor little car dragged the trailer for something over 50,000 miles. Of course, over this time the trailer was subject to a number of modifications. … [I]t came to Canberra in 1926 when father and grandfather were looking over the area. At that time they camped on the Monck property just outside Queanbeyan. On the way home down the Cooma Road the draw bar snapped, dug in and the trailer 'turned turtle' and, when the driver and his passenger got back to the stricken vehicle, the T Model Ford wheels were still up in the air and spinning. The trailer finished up with a steel channel draw-bar, self-acting brakes, which operated when it tried to push the car, and a stop light! It was pretty far advanced for the 1920s.*
>
> *Father was never one to travel light, and some of our trips from Canberra to Narooma were memorable. We preferred the road through Araluen because although slightly worse than the road over the Clyde, it enabled us to avoid the two ferries, at Nelligen and Bateman's Bay, which neither the car nor trailer liked much particularly at low tide.*
>
> [Mervyn Knowles *Canberra Historical Journal* March 1987.]

Martin Charles Boniwell CBE

1883–1967

Parliamentary Draftsman 1946–1949



Born at Surbiton, in Surrey, England on 25 February 1883, Martin Charles Boniwell was the son of builder Charles Boniwell and Martha, née Bewers. As a small child he migrated with his parents and older sister to Hobart, Tasmania. Three younger brothers were born in Tasmania. Awarded a scholarship to the prestigious Hutchins School in Hobart, Martin Boniwell was the only member of his family educated there. He entered the Tasmanian Public Service as a clerk in May 1899 and studied part-time at the University of Tasmania, graduating with a Bachelor of Laws in 1911.

Meanwhile he devoted much of his time to rowing. An outstanding oarsman he was also competitive in the harrier runs, football and cricket which kept the rowing team fit throughout the year. Boniwell was a member of the Tasmanian crew which competed in the Men's Interstate Eight-Oared Championship, the King's Cup, for several years. The visiting teams travelled to Perth by steamer in 1906. Cheered on by thousands of spectators lining the Swan River, the Tasmanian crew in the smallest boat, stroked by Boniwell, defeated the long-reigning Victorian champions to win the Cup. Placed second behind Victoria at the event in Adelaide in 1907, Boniwell's crew finished third in Melbourne in 1908 and Hobart in 1910. Pressures of study and work prevented Boniwell rowing in the championship in Brisbane in 1909. An active member of and team selector for the Derwent Rowing Club, he later rowed for and served a term on the committee of the Mercantile Club in Melbourne.

On 19 September 1912 Boniwell, then aged 29, and Ruby Okines were married at All Saints' Anglican Church in Hobart. Earlier that year he moved to Melbourne, leaving the State Crown Solicitor's Office to join the Commonwealth public service. When he was appointed as a Clerk E in the Professional Division of the Attorney-General's Department, from 1 June 1912, the provisions of the *Commonwealth Public Service Act 1902* relating to examination, probation, division of class and age of the appointee were waived. For almost two years from 19 July 1915 Boniwell served as Secretary to

Representatives of the Government in the Senate. Transferred to a newly designated Legal Assistant position in the Secretary's Office in June 1917, he advanced to a higher grade on 10 January 1918. His role was redesignated as 'Chief Clerk and Legal Assistant' in 1921, and then 'Chief Clerk and Assistant Parliamentary Draftsman' from 1 July 1924. He was admitted as a barrister and solicitor of the Supreme Court of Tasmania and of the High Court of Australia on 6 April 1925.

Boniwell travelled to Geneva as an adviser to the Australian delegation to the seventh session of the League of Nations held in September 1926, and assisted Attorney-General John Latham at the subsequent Imperial Conference in London. The Boniwell family, which by then included four daughters – Barbara (born in 1915), Joan (1920), and twins Nancy and Patricia (1925) – moved to Canberra in the first transfer of public servants in 1927. They travelled on the train from Melbourne with fellow drafter, Gilbert Castieau. Building a home in Mugga Way, Red Hill, the Boniwells quickly became active members of the new capital's community. Both parents played golf and were keen gardeners. Known for her hospitality, Ruby Boniwell was generous in sharing recipes, plant cuttings and garden produce. The family's names all appeared regularly in the sporting and social columns of *The Canberra Times*. When Barbara Boniwell, who worked in the Commonwealth Library, married *Hansard* staffer William Bridgman in 1937 George Knowles (Secretary to the Attorney-General's Department, Solicitor-General and Parliamentary Draftsman) 'presided over' their wedding breakfast. Possessed of a great sense of humour, Martin Boniwell was renowned for his witty verse, often written about current affairs or the people he knew.

A highly respected lawyer and a skilled drafter, Boniwell succeeded Knowles as Assistant Secretary and Assistant Parliamentary Draftsman on 10 February 1932. Notable drafting work in this role, which also involved extensive administrative and advisory duties, included major changes to tax law arising from the four reports of the 1932-34 Royal Commission on Taxation, and formulation of the *Empire Air Service (England to Australia) Act 1938* relating to provision of a flying-boat service. Made a Commander of the Order of the British Empire (CBE) on 23 June 1936, Boniwell acted as Secretary, Parliamentary Draftsman and Solicitor-General for some months while Knowles travelled to London for the Imperial Conference in mid-1937. Boniwell served as a member of a committee reviewing civil aviation administration following the crash of the airliner *Kyeema* which killed 18 people at Mount Dandenong, Victoria on 25 October 1938. Appointed Public Service Arbitrator from 16 February 1939, he returned to Melbourne to take up the position. The appointment had been opposed by the staff associations. Their anxiety was accentuated by Boniwell's early determinations, which were deemed to favour management. His continual insistence on his independence – behaving more like a judge than an arbitrator, and refusing merely to endorse agreements made by staff associations with the public service commissioner – frustrated both parties. In early

1946 Boniwell was transferred back to Canberra, although his home address remained in Brighton, Victoria.

When Knowles retired on 8 May 1946 Boniwell was appointed to act in the Parliamentary Draftsman position, newly separated from the roles of Secretary and Solicitor-General. This arrangement continued pending a major reorganisation of the Attorney-General's Department which resulted in the creation of the Parliamentary Drafting Division in 1948. Able to work past the official retirement age of 65 because of his original engagement in Tasmania, Boniwell was appointed Parliamentary Draftsman on 8 July 1948. He retired from the public service on 7 March 1949, soon after his sixty-sixth birthday. His termination payment created additional challenges for departmental administrators. Payments relating to the period he had worked in the State service more than 40 years before had to be negotiated with the Tasmanian government.

Boniwell continued working for the Commonwealth after his retirement. He served on an interdepartmental committee established in December 1948 to review defence legislation. A six-volume consolidation of Commonwealth Acts as at 31 December 1950 prepared by him was published in 1952. Survived by his wife and daughters, Martin Boniwell died at age 83 on 6 January 1967 at Caulfield in Melbourne. Cremation was at Springvale Crematorium on 9 January. Three years later Boniwell Street, Higgins (in the Australian Capital Territory) was named in his honour.

‘Redlands’, the family home of Martin and Ruby Boniwell, at 26 Mugga Way, Red Hill. The Boniwells lived next door to the Calthorpe family, whose home was later preserved as a museum of domestic life in early Canberra. Sir Robert Garran and his family lived at number 22, on the other side of the Calthorpes, while the Knowles home was at 16 Mugga Way. From March 1976 to August 1977 the then owner of 26 Mugga Way, retired army colonel John Moloney, gave the National Aboriginal Consultative Committee the use of the property, to establish an Aboriginal Embassy.
[Photograph courtesy of the National Archives of Australia.]

John Qualtrough Ewens CMG CBE QC

1907-1992

Parliamentary Draftsman 1949-1970
First Parliamentary Counsel 1970-1972

John Qualtrough Ewens was born in Salisbury Street, Unley in South Australia on 18 November 1907. The eldest of the three children of bank inspector Leonard Ewens and Amy (née Qualtrough) he had one brother and a sister. Awarded a scholarship to the prestigious Saint Peter's College, Adelaide, from 1920 to 1925 he proved to be a talented student, especially in languages. Graduating from the University of Adelaide with a Bachelor of Laws in 1929 he was awarded the Roby Fletcher prize for logic and psychology and the Stow prize in law. Attached to solicitors Knox and Hargrave during the first year of his degree, Ewens was admitted as a barrister and solicitor in the Supreme Court of South Australia in December 1929.

He was involved in a wide variety of work, principally in commercial law, during his time in private practice. His particular interest in constitutional law prompted a major shift in career and life direction. Persuaded by the South Australian Attorney-General, Ewens applied for a job advertised in the Commonwealth Attorney-General's Department in Canberra in 1932. Selected from a field of around 70 applicants to fill the Legal Assistant position vacant as a consequence of staff moves following Sir Robert Garran's retirement as Secretary to the Department, Ewens later quipped: 'I succeeded Garran. He went out at the top; I came in at the bottom.'[3] Appointed to the Department on 17 August 1933 Ewens immediately had what he described as the 'remarkable experience' of being assigned as Sir Robert's 'devil' to assist him in a commission to prepare several papers for the Conference of Commonwealth and State Ministers on Constitutional Matters, held in Melbourne from 16 to 28 February 1934. 'Profoundly' influenced by his mentor, Ewens later served on various organisations which Sir Robert chaired – including those associated with the development of a national university, and the local organising committee for the 1939 conference of the Australian and

[3] John Ewens, farewell function, 16 November 1972.

New Zealand Association for the Advancement of Science (ANZAAS). In February 1936 Ewens was one of the four pall bearers at Lady Garran's funeral.

On 4 November 1935 Ewens and Gwendoline Wilson, from Tranmere in South Australia, were married in the chapel of his old school in Hackney. The couple later had two sons, Warren (born in 1937) and Peter (1941). Settling in Canberra they built a home in Forrest and were hospitable and active members of the local community. A significant contributor to the Canberra University College and the Australian National University Ewens uniquely served not only as secretary to the Council of the College but as its administrative officer and later as a member, including as chair of the finance and staffing committee from 1954 to 1960. He lectured in patent law at the College and lent his drafting expertise to the development of its regulations and governance documents. Active in many other areas he held various offices on the Commonwealth Legal Professional Officers Association, in the Canberra Bowling Club and in a philatelic society. He played bowls and tennis and participated in a national quiz team. A 'gracious and accomplished' lady, involved in numerous community bodies, Gwen Ewens was especially renowned for her memorable sets and costume designs for the Repertory Society.

Exposed early to the gamut of the Department's work Ewens quickly established himself as a first-rate government lawyer and advanced comparatively rapidly within its Administrative Office. A Senior Legal Officer from 20 July 1939, he was promoted to a higher level on 26 August 1943. His outstanding drafting abilities became particularly evident in the development of national security legislation during the Second World War. When the Parliamentary Drafting Division was established in 1948 Ewens was promoted to the new office of Principal Assistant Parliamentary Draftsman. Soon afterwards he succeeded Martin Boniwell as head of the Division. Appointed Parliamentary Draftsman on 9 June 1949 Ewens held the role for the next 23 years. In this time he personally drafted or supervised a huge amount of important, sometimes controversial legislation. Major revisions of laws such as bankruptcy, patents and trade marks were undertaken. Ewens was a leading participant in cooperative Commonwealth and state ventures under the auspices of the Standing Committee of Attorneys-General from 1959, and the principal drafter of some of the Bills developed in this context including substantial offshore petroleum legislation and some especially challenging company law. He represented his office and Australia in numerous government and international forums. Later publicly acknowledged by both Commonwealth and State Attorneys-General his services to government and the law were recognised with an Order of the British Empire (OBE) in 1955 – he was made a Commander of the Order (CBE) in 1959 and a Companion of The Order of St Michael and St George (CMG) in 1971. Blunt speaking to the end, throughout his career he served with intellectual integrity 11 different Attorneys-General, 11 Prime Ministers and countless Ministers.

Just before his eightieth birthday, John Ewens was an honoured guest at the opening of the George Knowles Building, 10 November 1987. [Attorney-General's Department photograph]

Ewens put his distinctive stamp on the role of Parliamentary Draftsman. Unapologetic about his meticulous standards and rigorous approach to the training of drafters, he held that only the best service was due to the 'biggest client that any lawyer can have'. Other recorded 'Ewensisms' included his belief that there was no such thing as a simple Bill, and his warning to drafters that 'everything anyone tells you is *prima facie* wrong'. Declaring that drafters were born, not made, he expressed the view that this specialised form of law, an art in fact, 'ought to be the sole duty of the draftsman for his lifetime'. His own formidable knowledge, logic and ability to draft creatively, precisely and as concisely as the confines of legislation permitted were widely respected. The doyen of drafters of the era, around 1968 Ewens prepared a *Bibliography on Legislative Drafting* which was the basis of that circulated to Law Ministers by the Commonwealth Secretariat in London. There was no doubting his devotion to duty or his passion for his craft. Intense in his efforts to have the importance of the role of parliamentary drafters recognised he was instrumental in the creation of the separate statutory Office of

Parliamentary Counsel in 1970. Congratulated for this effort in the House of Representatives during debate on the Parliamentary Counsel Bill, Ewens was appointed as the inaugural First Parliamentary Counsel from 29 June 1970 until his retirement on 17 November 1972.

Retiring from the public service only when he had to, on the eve of his sixty-fifth birthday, Ewens continued working. With his expertise highly sought after he had plenty of opportunities to continue to indulge his love of language and the law. As a consultant drafter from 1973 he assisted with the particularly heavy legislative program under the Whitlam government. Two major projects – a Bill giving effect to the recommendations of the Woodhouse Inquiry into National Rehabilitation and Compensation, and a national companies Bill – lapsed when the government changed late in 1975. Appointed as a consultant by the Commonwealth Secretariat in 1973 Ewens conducted an appraisal tour of legislative drafting services in the Pacific region, visiting Fiji, Tonga, Papua New Guinea and Nauru. In this forum he also lent his support to the idea of a more formal association of drafters from Commonwealth countries. Engaged in 1976 to draft legislation in preparation for self-government of Norfolk Island, he worked for some time as a draftsman and adviser to the Norfolk Island Administration. In 1978 Ewens was appointed a part-time commissioner of the Australian Law Reform Commission. As one of its principal drafters he was enthusiastic in his adoption of the contemporary 'Plain English' style, even in the 'translation' of more traditionally drafted legislation – and was especially excited by the possibilities offered by word processing for drafting.[4] He also served as a consultant to the Victorian Law Reform Commission, and was a consultant drafter for the Constitutional Commission set up in 1985.

Arguably belatedly, in 1984 Ewens was appointed Queen's Counsel for the Australian Capital Territory. His eightieth birthday in 1987 was formally commemorated by publication of a book of essays on legislative drafting, contributed by distinguished lawyers. Survived by Gwen, their two sons and four grandchildren John Ewens died in his sleep at age 84 on 16 August 1992, in Canberra.

[4] Kirby J, 'Obituary – Mr JQ Ewens', *Australian Law Journal* vol. 66, December 1992, p. 870.

An Unlikely Champion

In *Essays on Legislative Drafting* published in honour of the eightieth birthday of JQ Ewens in 1988, Justice Michael Kirby CMG wrote of Ewens and his interest in 'Plain English':

> *[H]e was not the retiring type. Not only did he continue his association with the Law Reform Commission, ... he later became interested in a most unlikely cause. I refer to the 'translation' into 'plain English' of Federal legislation expressed in the traditional style. I say this was an 'unlikely' interest for him because it represented a kind of the Damascus Road conversion, at an advanced age, to a new and somewhat different mode of expressing legislation. It might have been expected that a person heavy with years and celebrated and honoured for a lifetime of distinguished service, would refuse, in the autumn of his life, to question settled ways of doing things. It is a measure of John Ewens' independence and liveliness of mind that he was to disdain such self-satisfaction. Instead, with the apparent enthusiasm of a new St Paul, he involved himself directly in one of the three most important developments which are occurring in Australia at this time, affecting the science of legislation to whose cause he had devoted his life.*[5]

[5] D St L Kelly (ed), *Essays on Legislative Drafting,* University of Adelaide, 1988, p. 86.

Charles Kennedy Comans CBE QC

1914 –

First Parliamentary Counsel 1972–1977

Charles Kennedy Comans was born in Melbourne on 21 October 1914. The only son of Michael Comans and Kate, née McLennan, he had one older and two younger sisters. Living in Essendon and Northcote, he attended local schools until he was old enough to travel on the tram to the recently founded Saint Kevin's Christian Brothers' College – from the primary school he won a scholarship to the secondary college, then situated in East Melbourne. Another scholarship enabled him to study law at Melbourne University. Awarded the John Madden Exhibition for constitutional law and the Jessie Leggatt Scholarship in 1934, Charles worked part-time with a small legal firm while studying for his Honours degree, then served his articles with the same firm. He graduated with a Master of Laws in April 1936 and was admitted as a barrister and solicitor in the Supreme Court of Victoria on 1 May that year.

Confronted with launching his career at the end of the Great Depression Charles applied for the earliest base-grade intake of university graduates to the Commonwealth public service. Not keen to leave Melbourne he initially rejected the offer of a job in the Taxation Branch of the Department of the Treasury in Canberra. Persuaded to reconsider he moved to the embryonic national capital just after his admission in May 1936, some months before his twenty-second birthday. He settled in Glebe House in Reid, where for 30 shillings a week he was provided with lodgings, three meals a day and laundry service. Quickly becoming involved in the local community he took up golf, and despite the hindrance of a gammy left foot played social tennis, badminton and occasionally cricket. A member of the Canberra Repertory Society he participated in amateur plays and 'musicales'. Preparing for a production of 'You Can't Take It With You' in early 1941, Charles and a protagonist rehearsed for a wrestling scene so enthusiastically that short-term insurance cover was arranged for the players. The various social functions Charles (or 'Charlie') was reported in the local press as attending included glamorous occasions such as the grand ball held in the Albert Hall in May 1937 to mark the coronation of King George VI.

Engaged in some professional work in the Tax Office Charles produced useful internal publications summarising rulings on tax cases. Forgoing an opportunity to return to Melbourne he instead took the advice of a senior mentor and accepted a transfer offered by George Knowles to the Attorney-General's Department in Canberra. Drafting was just one component of the work he started in the office at West Block late in 1938. In December that year, replacing John Ewens, Charles was appointed to act in the absence from duty of the Registrar of the Supreme Court of the Australian Capital Territory (ACT), the Clerk of the ACT Court of Petty Sessions, and the Deputy Registrars of Firms, Securities, Titles and Companies. By the time the Second World War started Charles was engaged primarily in drafting, later deemed a reserved occupation. Initially exempted from compulsory enlistment on medical grounds, he applied his talents throughout the War to the essential and enormous task of drafting regulations under the National Security Act. When senior drafter Laurie Thornber died in March 1943 Charles inherited the ever increasing workload of taxation drafting. Promoted to Legal Officer Grade 2 in August 1943, he was made Assistant Parliamentary Draftsman in the new Parliamentary Drafting Division at the end of 1948. Charles lectured in law subjects at the University College from 1938 to 1940 and again from 1945 to 1948.

Declaring himself to be much quicker than usual to make a decision on one important matter Charles courted stenographer Nancy Button, newly arrived from the Perth Crown Solicitor's Office on a temporary transfer in mid-1944. Married on 14 August that year at Saint Patrick's Cathedral in Melbourne the couple later had four children – a daughter Leigh born in 1946 and three sons, Michael (1948), Peter (1953) and Philip (1959). Observing lunchtime golf practice from the office window, Attorney-General 'Doc' Evatt told Charles he was 'too impetuous' in that game. An enthusiastic if not exceptional golfer, Charles played his last round at age 90. One highlight of his 50 year membership of the Royal Canberra Golf Club was a hole-in-one on the seventh in June 1961. A talented wordsmith, Charles enjoyed writing verse – most memorably on the relationship between the government and the public service for a parliamentary Christmas party in 1953, and his versification of the *Matrimonial Causes Act 1959*.

Generally acknowledged as a very patient man, Charles served a record 23 years as deputy to Ewens. Promoted to Principal Assistant Parliamentary Draftsman on 9 June 1949, he was awarded membership of the Order of the British Empire (OBE) for his work in this role on 12 June 1965, and was appointed Second Parliamentary Counsel from 29 June 1970 after the Office of Parliamentary Counsel was established. He had two work-related overseas trips, providing legislative advice relating to the 1950 appeal to the Privy Council concerning the government's expropriation of wheat and later accompanying a group negotiating double tax agreements. Acting throughout for long periods while Ewens acted as Secretary, Charles finally succeeded as First Parliamentary Counsel when Ewens retired in November 1972. It fell to him to manage the huge drafting workload under the incoming Whitlam government. On 5 March 1974 Charles

was appointed Queen's Counsel in the Australian Capital Territory. Days after Cyclone Tracy devastated Darwin in December 1974, Charles was sent there to help draft legislation dealing with restoration of the city. On 11 November 1975 he was called upon to draft the Proclamation dissolving both Houses of Parliament after the dismissal of the government, and was in the crowd to witness its reading and the famous response by Gough Whitlam. Retiring on 4 February 1977, Charles was made a Commander of the Order of the British Empire (CBE) in June that year.

Praised for his intellectual powers, supple drafting, honesty of purpose, loyalty and capacity for work, Charles was also described as 'the master of idiosyncratic prose'. Although he enjoyed drafting work and believed himself fortunate to have had such a satisfying career – and was known to have a mischievous sense of humour – his 'dour exterior' was noted by some. Not enamoured of the management aspects of the FPC role Charles retired at age 62, and spent the next few years working as a consultant to the Office. He was able to concentrate on drafting in his deliberate and 'unfaultable' style, provide assistance with work arising from the Standing Committee of Attorneys-General (SCAG), attend the 20th Australian Legal Convention in July 1979, and still play golf.

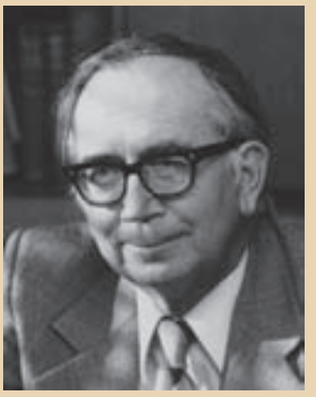
Nancy Comans died in 2001 and Charles subsequently lost two of his sons, Peter who died in 2002 and Michael in 2003. In June 2006 Charles visited OPC to view the conference room named in his honour, and in May 2008 attended a reception for drafters hosted by Judge Michael Kirby at the High Court. His oral history was recorded by the National Library of Australia in 2007. He celebrated his ninety-fifth birthday in 2009 with family at his home at 'The Grange' in Deakin. A year later he moved to aged care accommodation at 'Jindalee' in Narrabundah.

Great Expectations

Faced with enormous drafting challenges, Charles Comans was absolutely determined to provide whatever legislation was required by the government he served – later bemusedly remarking to one colleague that he seemed to have raised expectations in the process. In the House of Representatives on 16 February 1977 then Leader of the Opposition Gough Whitlam said of Charles, at the end of his term as First Parliamentary Counsel:

> *He was, I must confess, appalled at the burden that my colleagues and I imposed on him and his colleagues. In fact, we got to enjoy his engagingly lugubrious manner. He was always distraught at the onerous and intractable problems we would place on his desk. Nevertheless, he and his colleagues produced an immense amount of legislation and they did it not only with diligence but with patience, expedition and skill. It is worthy of note, I believe, that never had there been in any 3 years so many pieces of legislation or in fact such a high percentage of complex pieces of legislation. ... There has never been such a high percentage of legislation which has been challenged [in the High Court] and such a high percentage which has survived challenge. ... it was my practice from the beginning to involve the Parliamentary Counsel and successive Solicitors-General in the preparation of any legislation which any of us thought might be challenged. It was a wise precaution. The Government and the Parliament were well served.*

Bronte Clucas Quayle CB, OBE, QC



1919-1986

First Parliamentary Counsel 1977–1981

Bronte Clucas Quayle was born on 24 October 1919 at the Konetta Nursing Home in North Adelaide. The son of general storekeeper Alfred Quayle, who had migrated from the Isle of Man, and Edith (formerly Frearson, née Turbill), he had one older half-sister and a younger sister. Bronte's early childhood was spent at in Port Noarlunga, his family moving to Westbourne Park in 1926. Educated at Saint Peter's College, Adelaide, Bronte went on to study law at the University of Adelaide. A fellow student and debating teammate was Clarrie Harders, later Secretary to the Attorney-General's Department. Bronte played tennis for the law students' team, and some hockey.

His pursuit of a degree interrupted by the Second World War, Bronte was an articled law clerk when he enlisted in the Australian Army on 3 September 1940, just before his twenty-first birthday. Introducing himself to fellow soldiers as 'Jack' Quayle, he was promoted to Corporal on the day he reported for duty, and embarked less than two weeks later on HMAT *New Zealand* for Palestine. Attached to the Army Pay Corps, his first Christmas in the Middle East was spent recovering from illness in an Army hospital, the first of several such stays during the course of the war. He returned to Australia from Gaza in March 1942, after Japan entered the War and Prime Minister John Curtin recalled Australian troops to defend their own shores. Sent to Melbourne and Bendigo for four months, Bronte was posted to New Guinea until March 1944 when he was transferred back to South Australia for the remainder of the War. While he was home in 1942, Bronte and Joan Strickland from Millswood South Australia, who was also serving in the Army, became engaged. They were married in Saint Peter's College Chapel on 22 April 1944.

Discharged with the rank of Warrant Officer on 4 January 1946 Bronte continued his studies. Awarded the Stow prize in law, he graduated in 1948, and was admitted as a barrister and solicitor of the Supreme Court of South Australia the same year. In private practice in Adelaide following his admission, he moved his family to Canberra when he

was appointed as a Clerk, Third Division in the Attorney-General's Department in September 1950. By then Bronte and Joan had two sons – Peter, born in 1946, and Mark in 1949. Promoted to a Legal Oficer Grade 3 position in the Parliamentary Drafting Division on 3 May 1951, Bronte advanced to Senior Legal Officer on 24 April 1952. Refusing a later invitation to become Parliamentary Draftsman in South Australia he chose to continue working for the Commonwealth Government, and to stay in the burgeoning national capital, where the Quayles had settled in Deakin.

Establishing his career in drafting, Bronte was promoted to Assistant Parliamentary Draftsman on 1 April 1954. Noted for the exceptional speed and superb clarity of his work he proved himself competent to draft in wide-ranging fields. Recognised as a specialist in taxation legislation and that relating to retirement benefits for public servants and members of the defence force, he also developed an encyclopaedic knowledge of the customs tariff. In 1962, at the request of the Government of Pakistan, Bronte was seconded to assist in the drafting of a new constitution for that country. As a reward for his outstanding contribution in what proved to be a particularly onerous task he was awarded the Sitara-e-Pakistan (Star of Pakistan), a prestigious civilian award given by the Government of Pakistan for services to their nation. Bronte was praised in Parliament by the Prime Minister, Sir Robert Menzies, for his efforts in Pakistan.

Promoted to First Assistant Parliamentary Draftsman on 24 May 1964, Bronte was made an Officer in the Order of the British Empire (OBE) in 1969 for his services to the Commonwealth. Appointed as one of the two Second Parliamentary Counsel when the Office of Parliamentary Counsel (OPC) was created in 1970, he was responsible for much of the management and administration of the Office after Charles Comans became First Parliamentary Counsel in November 1972. Particularly interested in training young lawyers in the art of drafting, Bronte was the architect of the ‘pairs’ system instigated in OPC in 1973. In July that year he travelled to Italy, France, the United Kingdom, Canada and America as a member of a committee established by the Attorney-General to investigate the use of computers to store legal information. In March 1974 he was Australia’s representative at a seminar in London to discuss the challenges of recruiting, training and retaining parliamentary drafters in various Commonwealth countries. Conscious of the acute shortage in this field in Australia, Bronte took opportunities to procure the occasional drafter for OPC. Gregarious and kind, he took a special interest in those he recruited. Tolerant and respectful of other cultures and creeds he was instrumental in fostering the cooperation between Commonwealth drafting offices which facilitated the later formation of the Commonwealth Association of Legislative Counsel (CALC).

Succeeding Charles Comans as First Parliamentary Counsel on 5 February 1977, Bronte was appointed Queen's Counsel for the Australian Capital Territory on 15 December 1978. He was made a Companion of the Order of the Bath (CB) on 31 December 1979.

Prominently involved in securing uniformity in State and Territory legislation, he also supervised the adaptation of Commonwealth legislation to computer typesetting in 1980. Able to give easily understood explanations of complex provisions to clients at all levels, and renowned for considerable directness and a high degree of professionalism, Bronte was trusted and appreciated by parliamentarians on both sides of politics and admired and respected in legal circles. He retired in January 1981 for health reasons, the rheumatic fever he suffered as a child having weakened his heart.

Known for his dry wit, sense of fun, capabilities as a handyman and love of his family Bronte had varied interests outside the law. Sociable, and keen on music and literature he was a member of the Canberra Wine and Food Club and of University House at the Australian National University. A member of the Yacht Club, he sometimes took a dinghy to office picnics, commandeering his son from University to help him sail staff on the lake. Many stories about Bronte concerned his love of fast cars and slow boats. He learned to drive in the late 1930s while a student in Adelaide but did not own a car early in married life – he and Joan cycled to their boat at the beach in Glenelg with their baby son in the bicycle basket. A foundation member of the Canberra Sporting Car Club Bronte later served as its president and with mate Jack Richardson (legal academic and the first Commonwealth Ombudsman) donated a trophy for an annual trial. Joan and son Peter shared his passion for rally driving. The Quayles bought a block of land to build a house in Broulee in the mid-1950s. Until the Bateman's Bay Bridge over the Clyde River opened in November 1956, and the Nelligen Bridge in December 1964, Bronte's rapid Friday afternoon trips to the coast would generally be interrupted by having to wait for a car ferry to cross the river. A strong believer that alcohol and driving did not mix, Bronte did not join the locals who waited in the Nelligen pub, leaving their wives (who often could not drive) to ease the brake to roll the cars slowly towards the ferry. His strong sense of competition saw him trying to be the first off the punt on the other side of the river, and setting himself a challenge of how quickly he could pass the next five cars. Much more relaxed at Broulee he refused to have the telephone put on and, during his term as First Parliamentary Counsel, frequent offers to have an official phone installed. Clad in khaki shorts and shoes without socks he greeted Commonwealth car drivers arriving with messages from Ministers asking him to return to Canberra during the weekend, sending them back with a polite handwritten response that he would be back at work on Monday morning.

After several months' illness, Bronte Quayle died in Canberra on 12 October 1986 at the age of 66. He was survived by Joan, their two sons and four (ultimately ten) grandchildren.

Manx Men

Of the seven First Parliamentary Counsel appointed between 1970 and 2011, three shared a common heritage. John Qualtrough Ewens, Bronte Clucas Quayle and Peter Quiggin all had family names originating from the Isle of Man. Boasting a continuous parliament founded in 979 AD, the self-governing British dependency located in the Irish Sea also produced many notable sporting, entertainment, literary and political identities. Among these were the Gibb brothers, who formed the musical group The Bee Gees; sprint cyclist Mark Cavendish; writer and journalist Alan Corkish; racing driver Alex Lloyd; musician Harry Manx; and eminent linguist Lord Randolph Quirk. Also Manx born was Illiam Dhone, better known as William Christian. Executed in 1663 for leading an uprising against English rule over the island, he was the great grandfather of 'Mutiny on the Bounty' leader, Fletcher Christian.

Geoffrey Kolterman Kolts OBE QC

1930–

First Parliamentary Counsel 1981–1986

Geoffrey Kolterman Kolts was born in Parramatta, New South Wales, on 12 March 1930. The son of newsagent Samuel Kolts and Naomi, née Brukarz, he had one younger sister. Growing up in various Sydney suburbs, Geoff attended Homebush Primary School and the all-boys Fort Street High School. He completed a Bachelor of Laws with First Class Honours at the University of Sydney in 1952, finishing *proxime accessit* (runner-up) for the University Medal. Admitted as a solicitor in the New South Wales Supreme Court in 1953 he worked in a law firm for a year, then as a legal officer for the Australian Stevedoring Industry Board. There during the 1954 Committee of Inquiry into the industry, which led to passage of the *Stevedoring Industry Act 1956*, Geoff spent most working weeks of that year in Melbourne.

Keen to join the Attorney-General's Department in Canberra, Geoff initially accepted a position in the Courts and Titles Branch in 1955. He was transferred to the Advisings Division following some lobbying of the Secretary, Ken Bailey, by Geoff's former university professor, Julius Stone. With Bailey away for extended periods relating to a long-running case before the International Court, the Parliamentary Draftsman, John Ewens, frequently acted as Secretary. He persuaded Geoff to switch to drafting – declaring that anyone could write an opinion, but something special was required to draft a Bill. Promoted to the Parliamentary Drafting Division on 24 April 1957, Geoff advanced to a Legal Officer Grade 3 a year later. Allocated to work first with veteran drafter Bill Fanning, Geoff retained clear memories of winter mornings in his early years in the Department, tramping across icy ground from his accommodation at Lawley House to the office at West Block. Attending ballroom dancing classes to polish his skills for the regular dances and balls held in Canberra, Geoff met Scottish-born Valerie Wallace, then working for the British High Commission. They were married at a friend's home in Canberra on 22 July 1960.

Promoted to Senior Legal Officer on 3 August 1961, and Principal Legal Officer on 28 June 1962, Geoff was subsequently appointed Senior Assistant Parliamentary Draftsman. Designated Senior Assistant Parliamentary Counsel following the 1970 creation of the separate Office of Parliamentary Counsel, he was promoted to First Assistant Parliamentary Counsel on 15 June 1972. In November that year he was appointed Second Parliamentary Counsel after John Ewens retired. Described by contemporaries as a very clever lawyer with an incredibly analytical mind, Geoff was renowned for being extraordinarily fast at his work. One particularly notable achievement, drafting the extremely complicated Companies (Foreign Takeovers) Bill in 1972, evidenced not only his skill and his speed but the extreme time pressures on drafting legislation at the time. Made an officer of the Order of the British Empire (OBE) on 3 June 1978, Geoff was appointed First Parliamentary Counsel from 31 January 1981, when Bronte Quayle retired. As FPC, Geoff's most remarkable drafting feat was to produce the voluminous Capital Gains Tax Bill 1986 in under three months, while still carrying out his management tasks.

Declaring himself not particularly democratic as FPC, Geoff managed the Office almost single-handed. An avid advocate of traditional drafting style he believed that, to serve users at all levels, legislation needed to be as correct as possible, drafted in such a way that it could not be intentionally misunderstood. Faced with public criticism from 'Plain English' crusaders in the early 1980s, Geoff defended the Commonwealth's approach. Setting a high professional standard, and promoting drafting as a career for first-rate lawyers straight out of university, he was a mentor to many. Strongly supportive of cooperation between legislative drafting offices, from the late 1970s he worked towards the formation of an association of parliamentary and legislative counsel in Commonwealth countries. His energetic promotion of the idea, and personal involvement in drafting a constitution for the proposed body, were instrumental in the establishment of the Commonwealth Association of Legislative Counsel (CALC) in September 1983. Having arranged for Australia to provide administrative headquarters for the Association at the start, Geoff himself served as its Secretary from the end of 1984 until September 1986. Undertaking more extensive work-related overseas travel than his predecessors he arranged the first exchanges of drafters with other countries. In 1982 with Patrick Brazil, then Deputy Secretary in the Attorney-General's Department, Geoff carried out an overseas study on extrinsic aids to statutory interpretation; and drafted subsequent related amendments to the *Acts Interpretation Act 1901*.

Geoff was appointed Queen's Counsel for the Australian Capital Territory in October 1982, and after being admitted to the bar in New South Wales also took silk for that State. Resigning as First Parliamentary Counsel on 30 June 1986 he was appointed Commonwealth Ombudsman from 1 July, the second person to hold the position under the *Ombudsman Act 1976*. As Ombudsman, he was once again a member of the Administrative Review Council (ARC), a role he had filled from the Council's beginning in

1977 until 11 November 1982. Geoff was described by fellow member, Justice Michael Kirby, as applying 'his razor sharp and mathematical mind to the many problems of legislative drafting that came up' during the exciting early years of the ARC.[6] Retiring again in October 1987 and reverting to the New South Wales solicitors' roll Geoff then worked at Freehill Hollingdale and Page for nine years, including four as a partner. Involved in drafting on contract for Australian and foreign governments, he continued some work as a consultant for OPC after he left the law firm in 1998.

Outside drafting, Geoff applied his writing skills to articles for journals, letters to newspapers, contributing to a book of essays published in 1988 in honour of John Ewens, and preparing a draft biography of Bronte Quayle for the *Australian Dictionary of Biography*. For many years Geoff had a pet dog to care for – his miniature Poodle, Louis, often accompanied him to work during his term as FPC. An enthusiastic bridge player, Geoff competed with great success in competitions in Canberra and in Sydney, to where he moved after the death of his wife on 3 March 2006.

Unfazed

The rapidity with which Geoff Kolts analysed situations was demonstrated in one of OPC's favourite stories, as recounted in a speech prepared by FPC Hilary Penfold for the conference celebrating the Office's twenty-fifth anniversary in 1995:

> *Now many of you will know, or know of, Adrian van Wierst, one of the senior drafters in the Commonwealth office, who has always been known for devoting his attention more to his drafting skills than to his wardrobe. Adrian's dress sense figures in a story that is part of our oral tradition, although the story really demonstrates the quick thinking of Geoff Kolts. Some time in the 1970s, during the Fraser Government, Adrian and Geoff were summoned to a Cabinet Committee meeting in Parliament House to explain a complicated tax Bill. Is there any other kind? At one point during the meeting, Geoff found himself in the Cabinet ante-room with Jim Killen [then Minister for Defence], who was, of course, a very proper and indeed a dapper dresser. 'There's some fellow in there with a pullover on', said Jim Killen in tones of disgust. 'Who is he?' Geoff realised immediately that this must be Adrian, but he wasn't fazed. Without batting an eyelid, he said 'Oh, he's from the Tax Office'.*

[6] Kirby, The Hon Justice Michael AC CMG 'AAT – Back To The Future. The AAT – Twenty Years Forward: Return Of The Native'. Speech at the Australian National University circa 1996.

Ian Maclean Lindsay Turnbull QC

1930–

First Parliamentary Counsel 1986–1993

Born in Edinburgh, Scotland on 5 November 1930, Ian Maclean Lindsay Turnbull was the elder of the two sons of medical general practitioner Andrew Turnbull and Josephine, née Wright. Migrating to Southern Rhodesia (later named Zimbabwe) when Ian was aged five, the family moved to different places in the African bush with his father's government work. Ian attended various primary schools – he ran away from the first one after his first day there and did not go back. His secondary education was attained at the renowned all-boys Saint George's College in Salisbury (later named Harare). Sent to England to attend university at Cambridge, he studied economics and law. Co-founder of the Cambridge Weightlifting Club, he represented Clare College in rowing, shot-put and discus events. Graduating with Honours in Arts in 1953 and Law in 1954, Ian returned to Salisbury and was admitted as an advocate of the High Court of Southern Rhodesia. He worked for six years as a Crown Counsel in the Attorney-General's Office, mostly prosecuting trials and arguing criminal appeals in the High Court.

Not enamoured of this stressful occupation, which was detrimental to his health, Ian was delighted to be transferred in 1960 to legislative drafting. His role was to support the principal drafter, the Solicitor-General, while the Attorney-General, who normally shared the drafting duties, was preoccupied with drafting a new multi-racial Constitution. With limited experience of the way legislation was put together, Ian began his drafting career by purchasing a new fountain pen, a *Concise Oxford Dictionary* and Fowler's *Modern English Usage*, and borrowing the Solicitor-General's battered copy of Sir Alison Russell's *Legislative Drafting and Forms*. Loving the work, Ian learned quickly but claimed a record of sorts for slow drafting in one of his early assignments. Effecting removal of the colour bar in the public service in 1961, Ian and a policy officer undertook three months of extensive consultation to produce a two-clause Bill – in addition to the short title and commencement provision it inserted a one-line section in the relevant Act to the effect that the service would be open to persons of any race.

A senior drafter on the Inter-Governmental Committee for the Dissolution of the Federation of Rhodesia and Nyasaland in 1963, Ian became the principal drafter for Southern Rhodesia in 1964. Following the 1965 unilateral declaration of independence, that was based on emergency regulations that Ian had not drafted and was contrary to the 'rule of law' fundamental to his life and profession, he decided to emigrate. Seeking a warm climate, in a democracy founded on English law, Ian wrote to drafting offices in all Australian capital cities. He received a response from the Commonwealth Parliamentary Draftsman, John Ewens, saying that Ian 'might' be appointed if he came for an interview and proved acceptable.

Migrating to Australia in 1968, Ian was accompanied by his family. He and his English-born wife Felicity (née Stedman) – who had met during a holiday in Nyasaland and married at the Catholic Cathedral of the Sacred Heart in Salisbury on 11 June 1955 – had three children, David (born in 1957), Andrew (1958) and Barbara (1963). Travelling on the Greek Chandris Line migrant ship *Ellinis*, the Turnbulls were greeted on arrival in Sydney by an officer from the Attorney-General's Department and flown to Canberra, where they were welcomed by drafter Jim Monro and taken to the Hotel Acton. Interviewed by the Acting Parliamentary Draftsman Charles Comans the following Monday Ian, by then very low on funds, immediately started work in the Parliamentary Drafting Division. Employed at a junior level, as a temporary Legal Officer, and unable to get reciprocal admission he was obliged to attend a Constitutional Law course at the Australian National University (which he passed with a Distinction) and to sit the Commonwealth Practitioners Board examination. He was admitted as a Barrister and Solicitor of both the Supreme Court of the Australian Capital Territory and the High Court of Australia in 1970. Ian and his family all became Australian Citizens on 22 May 1971. Generally befriended by the close-knit group of drafters Ian and another migrant from Africa, John Adams, faced one singular hurdle, that of overcoming the suspicion of John Ewens for drafters not trained under his own regime.

Still a temporary Assistant Parliamentary Counsel when the separate Office of Parliamentary Counsel was established in 1970, Ian was finally permanently appointed, as a Senior Legal Officer, in September 1971. Ascending through the ranks he was promoted to Senior Assistant Parliamentary Counsel in 1972, First Assistant Parliamentary Counsel in 1975 and Second Parliamentary Counsel in 1980. He succeeded Geoff Kolts as First Parliamentary Counsel on 1 July 1986. In December 1989 he was appointed Queen's Counsel for the Australian Capital Territory. Throughout his time in the Office Ian took a particular interest in improving drafting style. In junior roles he noted problems with traditional Commonwealth practices and devised solutions. A couple of minor suggestions for improvement were accepted by John Ewens, and Charles Comans implemented some more significant changes initiated by Ian. As First Parliamentary Counsel, Ian immediately instigated a review of drafting style. During his

term he was responsible for implementing many simplifications and plainer language in drafting. He wrote the first *Plain English Manual* in 1993.

Aiming to simplify drafting style without lowering the Commonwealth's high standards of precision, Ian had an especially difficult task. Responsible for OPC's written and oral submissions to the 1992 parliamentary inquiry into legislative drafting, he needed to defend the Office's record at the same time as trying to bring about change. Endeavouring to cooperate with vocal critics of Commonwealth style he was branded as overly conservative by the more intemperate 'Plain English' campaigners, criticised as doing too much by some conservative lawyers, viewed with deep suspicion by the most conventional drafting offices and described as 'a wild radical' by one State colleague. Under Ian's leadership OPC's moves away from traditional drafting style gradually gathered momentum. Hailed as a reformer by the Statute Law Society he was invited to London to address its members. The author of several papers on the topic, he was also lauded in the *Michigan Bar Journal* for his innovation in 'clear drafting'.[7]

Described by colleagues as balanced, a thorough gentleman, and 'lovely to work for', Ian introduced a more consultative style of management to OPC. Financial and administrative responsibilities were devolved to Second Parliamentary Counsel and the three statutory officers acted as a management team. After OPC's earlier unfortunate experience with computers, Ian successfully reintroduced word processors to the Office and upgraded its information technology capabilities. Fostering cooperation and mutual exchange between drafting offices he organised the first highly successful conference for drafters from around Australia and New Zealand, held in Canberra in July 1992. He retired on 30 June 1993 and was farewelled at a memorable function at the High Court. Post-retirement, Ian and Felicity moved to Gerringong where he was able to indulge outdoor interests in surf skiing and swimming – as well as playing the pipe-organ, composing a little and reading lots. In November 1996 they returned to live in Canberra to be closer to their family.

[7] *Michigan Bar Journal* vol. 70, no. 6, June 1991.

Ian Turnbull in 1952, during his Cambridge University days.
[Photograph courtesy of Ian Turnbull]

Hilary Ruth Penfold PSM QC

1953–

First Parliamentary Counsel 1993–2004

Hilary Ruth Penfold was born on 15 November 1953 in Dunedin, New Zealand. The eldest of the seven children of English-born William Johnstone Penfold and Australian Laurice, née Gaston, she had two brothers and four sisters. The family left New Zealand when Hilary was three (after their home was damaged in a landslide) and moved to Wagga Wagga in New South Wales. Commencing her formal education at a one-teacher school in nearby Marrar, Hilary attended Mount Austin Primary School from its foundation in 1959. In 1963 while her father, a lecturer in political science, was on sabbatical the Penfolds lived in Southampton, England. They then moved to Sydney, where Hilary won a scholarship to undertake her secondary schooling at Ascham Girls' School at Edgecliff. Going on to study at the Australian National University in Canberra, Hilary lived in Garran Hall. Finishing a combined Arts/Law degree with First Class Honours in Law in 1976, she was awarded the Tillyard Prize.[8] On 29 November 1975 Hilary and fellow student Mark Cunliffe, from Canberra, were married at the historic Saint Francis Xavier Catholic Church at Hall.

In 1977 Hilary began a 20-year career with the Office of Parliamentary Counsel. The Office representative on a joint graduate selection committee, Adrian van Wierst, acted swiftly to claim Hilary for OPC although other panel members had decided against her. They were concerned that, because of her expressed intention to have children, she might not remain in the Department long. After completing the sponsored Legal Workshop, and being admitted to practice in the Supreme Court of the Australian Capital Territory, Hilary started work in July. Paired first with Adrian and then with Geoff Kolts, she learned drafting with some of the most skilled in the profession. Early projects included taxation legislation, stevedoring industry work and the complex and

[8] Awarded to a student completing a degree of bachelor with honours, for outstanding personal qualities and contributions to University life.

voluminous companies and securities package, which involved extensive Commonwealth state negotiation. Quickly establishing herself as exceptionally talented, and the only female drafter for some time early in her career, Hilary also proved adept at dealing with outmoded attitudes outside the Office. Most memorably, at a meeting on industrial relations legislation in Melbourne she asked Geoff Kolts in a stage whisper if the QC who had just called her 'dear' when she made a suggestion treated Geoff in the same way.

Widely respected as an outstanding lawyer and brilliant drafter, Hilary advanced rapidly, becoming the first woman in OPC to progress to each senior level. In May 1981 she was promoted straight to First Assistant Parliamentary Counsel in the then Second Division.[9] Appointed Second Parliamentary Counsel in 1986, Hilary succeeded Ian Turnbull as First Parliamentary Counsel from 7 July 1993. Her achievements were even more remarkable as she took several periods of extended leave, to accompany her husband on an exchange with the United Kingdom Home Office from May 1991 to November 1992, and to have their three children. Jancis was born in 1985, Joshua in 1987 and Thomas in 1991. In 1984-1985 Hilary had worked for nine months as head of the Attorney-General's Department Special Projects Division, dealing with such diverse and politically sensitive areas as constitutional reform, a Bill of Rights proposal, privacy, legal aid funding, territories legal policy and royal commissions. Maintaining an effective work and home life balance, she both led by example and helped others do the same. As First Parliamentary Counsel she implemented a range of family-friendly initiatives, including reasonable hours and part-time work options, to assist both female and male employees to pursue other responsibilities and interests. Hilary herself was a member of a parent group liaising with the local government over the regulation of long day care centres in the ACT. Other interests outside work included reading, cooking, quilting and travel.

Reappointed for a second seven-year term in 2000, Hilary ultimately served over 10 years as First Parliamentary Counsel. As well as the normal legislation program, during this period OPC was tasked with some especially large and complex drafting projects. These included major revision of corporations and income tax laws, GST legislation, significant workplace relations reforms, and extensive and controversial changes to native title legislation. Notably protective of her staff in the face of any unreasonable demands, Hilary personally took on some of the more politically sensitive and urgent work. This included the contentious 'Tampa' legislation, which was drafted in the Attorney-General's office at Parliament House in around five hours on the afternoon of 29 August 2001. That night the Border Protection Bill 2001, which aimed to put

[9] The Senior Executive Service (SES) was established as the senior management group of the Australian Public Service in October 1984.

beyond doubt the domestic legal basis for actions taken in relation to foreign ships within the territorial sea of Australia, was rejected in the Senate.[10]

Committed to improving drafting standards and readability, Hilary promoted innovations in plain language, document testing and the formatting of Bills, and supported major enhancements to the Office's information technology systems. FPC during a sustained period of rapid change, and increasing devolution of managerial responsibility to agencies, she faced particular challenges in workplace relations during her term, including the negotiation of OPC's first agency bargaining agreement. She established recruitment and training strategies and enhanced employment conditions to ensure the sufficient and ongoing supply of high quality drafters. Focused on achieving cooperation between all stakeholders in the preparation of legislation, Hilary worked with officers from the Government Division in the Department of the Prime Minister and Cabinet to devise and implement an improved priority system for the allocation of drafting work, and wrote a guide for people working with OPC on legislative projects. Promoting the exchange of ideas between drafting offices in Australia and overseas, she was a regular conference presenter and author of journal articles. Her careful planning and organisation ensured the success of a conference held to celebrate OPC's twenty-fifth anniversary in 1995, although she fell ill and was unable to attend.

Awarded a Public Service Medal in 2000, Hilary was the first woman to be appointed Commonwealth Queen's Counsel, on 10 May 2001. Serving as President of the Commonwealth Association of Legislative Counsel (CALC) from 1999 to 2003, she was also responsible for the organisation of the CALC Conference held in Melbourne in April 2003. Hilary was made an *ex officio* member of the inaugural Board of Taxation when it was established in September 2000; and in late 2003 chaired a task force set up by the Attorney-General to review the management of migration litigation. She resigned as First Parliamentary Counsel when she was appointed Secretary of the new Department of Parliamentary Services from 1 February 2004. A collector of apt cartoons, Hilary featured in one at this time. *The Canberra Times* cartoonist Ian Sharpe, who depicted her issuing directions on her mobile phone while she mowed the lawn at Parliament House, only hinted at the challenges of Hilary's new role. In it, she was responsible for settling in a department amalgamated from three former bodies; in addition to managing Parliament House and providing, amongst others, security, information technology, recording, broadcasting and library services to the Parliament.

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[10] Parliamentary Library Bills Digest No. 62 2001-02 Border Protection (Validation and Enforcement Powers) Bill 2001.

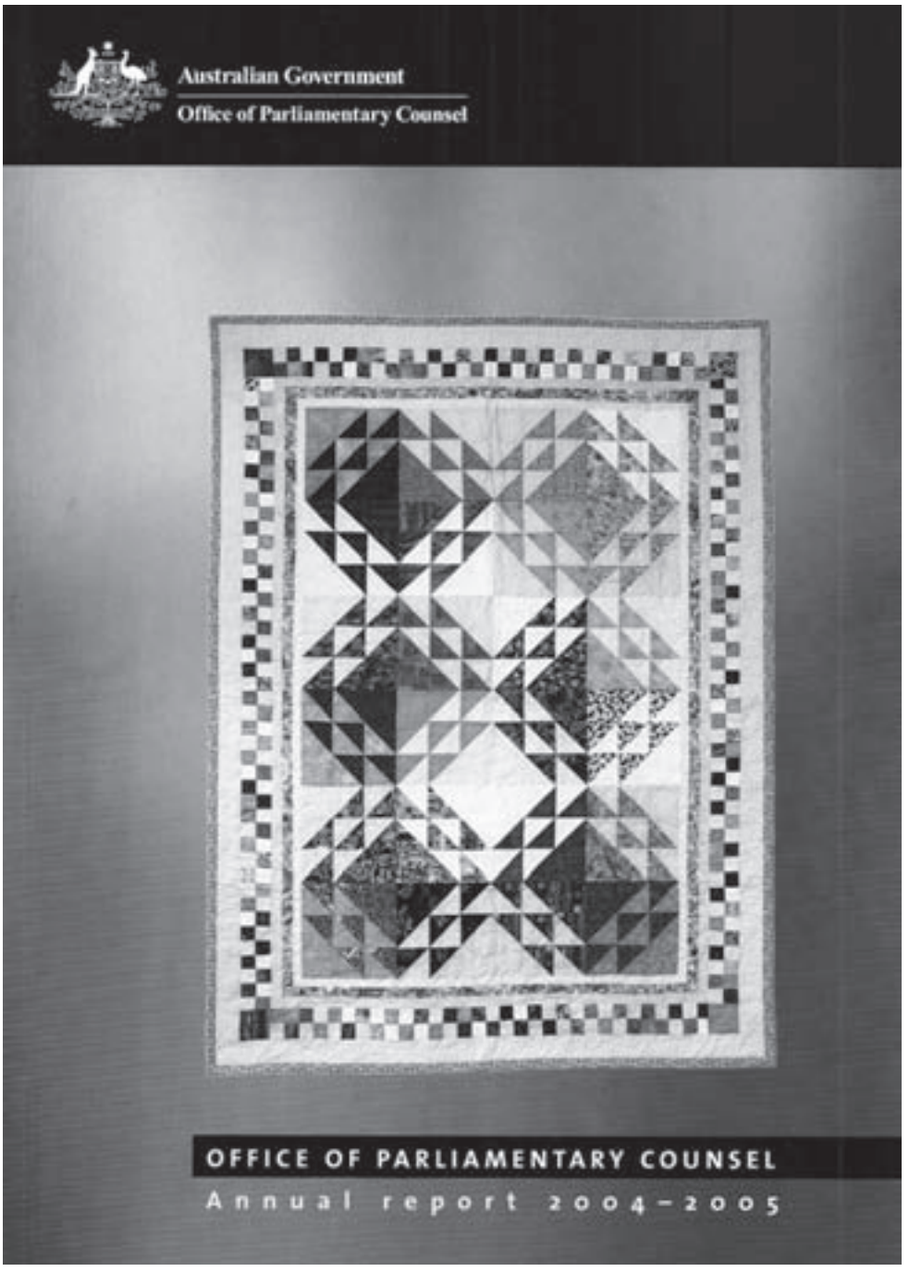
Hilary's robust sense of humour was an asset after her appointment as the first female resident judge in the ACT Supreme Court was announced, on 11 December 2007. Made using a new selection process, the appointment was not without controversy within the Territory's Bar Association. Confronted with the headline 'Government in Bar fight over Penfold', Hilary suggested to her sons that they would not have expected hers to be the first of their names to appear on the front page of the newspaper over a bar fight. Justice Penfold took her oath of office at a ceremonial sitting of the Court on 1 February 2008. In this new role she had the opportunity to fulfil a wish she had once expressed as First Parliamentary Counsel –that judges would seek to be constructive in their comments on legislation, thereby giving useful advice to drafters.[11]

Touché

Justice Michael Kirby may well have felt an extra measure of satisfaction in celebrating Penfold J's elevation to the Bench of the ACT Supreme Court on 1 February 2008. Reviewing her contribution to a collection of essays offering various perspectives on statutory interpretation, published just months before, he had written:

> *In thirty-three years I have never allowed myself the indulgence of denouncing parliamentary drafters. Their task, often performed under fearsome pressures of time and political drama, is described by ... Hilary Penfold QC in her chapter. ... laid out, as one would expect, with pristine logic and clarity. It is interesting to read how parliamentary drafters work. Clearly, they have a high sense of non-partisan professionalism. At the end of her chapter, Ms Penfold gets her own back on the occasional judge who takes a pot-shot at the legislative drafters. ... She makes the point that, now that it is generally recognised that judges make law, it is reasonable to expect that they should do so with greater clarity and precision. Ouch!*
>
> [Kirby J Review of Statutory Interpretation – Principles and Pragmatism for a New Age, July 2007]

[11] H Penfold *The Genesis of Laws*. Paper prepared for the 'Courts in a Representative Democracy' conference, November 1994.



The beautiful quilt shown on the front of the 2004-2005 Annual Report was made by Hilary Penfold and presented to OPC to commemorate her departure from the Office. Featuring Hilary's signature colour, purple, the quilt was put on display in the foyer of the executive area.

Peter Alan Quiggin PSM

1961–

First Parliamentary Counsel 2004–

Youngest of the three sons of Charles Quiggin and Patricia, née Hardwick, Peter Alan Quiggin was born in Adelaide on 17 April 1961. His father worked as an electronics engineer supporting the space program, his mother as a research assistant in demography. The family moved to Canberra when Peter was aged nine. He attended school at Enfield Primary in Adelaide; and Macquarie Primary, Canberra High and Hawker College in the ACT before going on to tertiary studies at the Australian National University. Majoring in pure mathematics and computer science, Peter achieved a Bachelor of Science in 1984, and a Bachelor of Laws the following year. Completing Legal Workshop in 1986, he was admitted as a Barrister and Solicitor of the Supreme Court of the Australian Capital Territory. In 1991 he completed a Graduate Diploma in Professional Accounting at the University of Canberra. During that year he was also employed at the University as a part-time tutor in accounting.

On 11 October 1986 Peter married Helen Martin at Christ Church, the Anglican church in Hawker. Originally from Tyabb, Victoria, Helen had attended Hawker College with Peter. The couple later had two sons – Rodney, born in 1991, and Geoffrey in 1992. During 1987 Peter worked as associate to Deputy President Robert Todd at the Administrative Appeals Tribunal. In February 1988 he joined the Australian Taxation Office as a Graduate Administrative Assistant, undertaking placements in the policy and legislation, and income tax areas, and at the ACT office. At the end of his training year he was appointed to the Advising Branch. It was during an instructors' meeting with Adrian van Wierst that Peter first became attracted to a career in drafting. Successful in his application for a Senior Legal Officer position advertised in the Office of Parliamentary Counsel some months later, Peter was aware that his computer science knowledge was as important to OPC as his legal qualifications. Starting work at OPC at the beginning of January 1990, Peter initially assisted Adrian with information technology work as part of his new job, but later took over responsibility for the function, becoming the Director of Information Technology.

Peter arrived during a formative period for OPC. Major change was pending or underway in both drafting itself and the management of the Office. The accompanying disruption and some disgruntlement of staff made workplace relations challenging in subsequent years. Proving to be a talented drafter, able to quickly identify issues and their implications, devise effective solutions and present these in clear terms, Peter worked on Bills on a range of topics including taxation, native title and immigration. He applied the same analytical and tactical skills to developing the Office's IT system, and to wider management issues. As a junior drafter he enthusiastically promoted the potential of technology to support drafting processes. Determined to implement the system properly, in OPC's second attempt at computerisation, he had greater opportunities to realise this objective in progressively more senior positions. In all cases preceded by a substantial period of acting at the level, he was appointed Senior Assistant Parliamentary Counsel in March 1995, First Assistant Parliamentary Counsel in January 2000 and Second Parliamentary Counsel in June 2001. Under his direction OPC implemented an innovative and highly effective IT system, which set a benchmark for other drafting offices. Delivering considerable efficiencies in the production of legislation, the system also provided leading-edge research tools for drafters and valuable assistance to OPC's clients, including parliamentary staff.

A persuasive advocate of the value of technology for drafters, and an articulate and entertaining speaker, Peter gave regular presentations on the topic. He was a particularly active member of the Australasian Parliamentary Counsel's Committee IT Forum from its creation in 1995. Initiatives he instigated significantly enhanced the administrative, technical and editorial support provided to OPC's drafters through the establishment of small, multi-skilled, specialist 'service centres'. In the face of some inevitable resistance to office reforms, he honed his capacity for lateral thinking and retained his renowned sense of humour, keeping on his desk a 'troublemakers' box' for all the problems he needed to discuss with FPC Hilary Penfold. He contributed to improving drafting standards, in the mid-1990s doing substantial work on the use of tables and diagrams in legislation. In 2002 he devised a new approach which substantially simplified commencement provisions for the users of legislation. In June 1998, as one of a select group of Australian Public Service officers, Peter attended the four-week 'Leadership for a Democratic Society' course run by the Federal Executive Institute in Washington, USA. Outside work, he was involved in voluntary boards at his sons' schools, and for the Scout Association of Australia. He played and umpired hockey for many years, and maintained an interest in cars and car clubs.

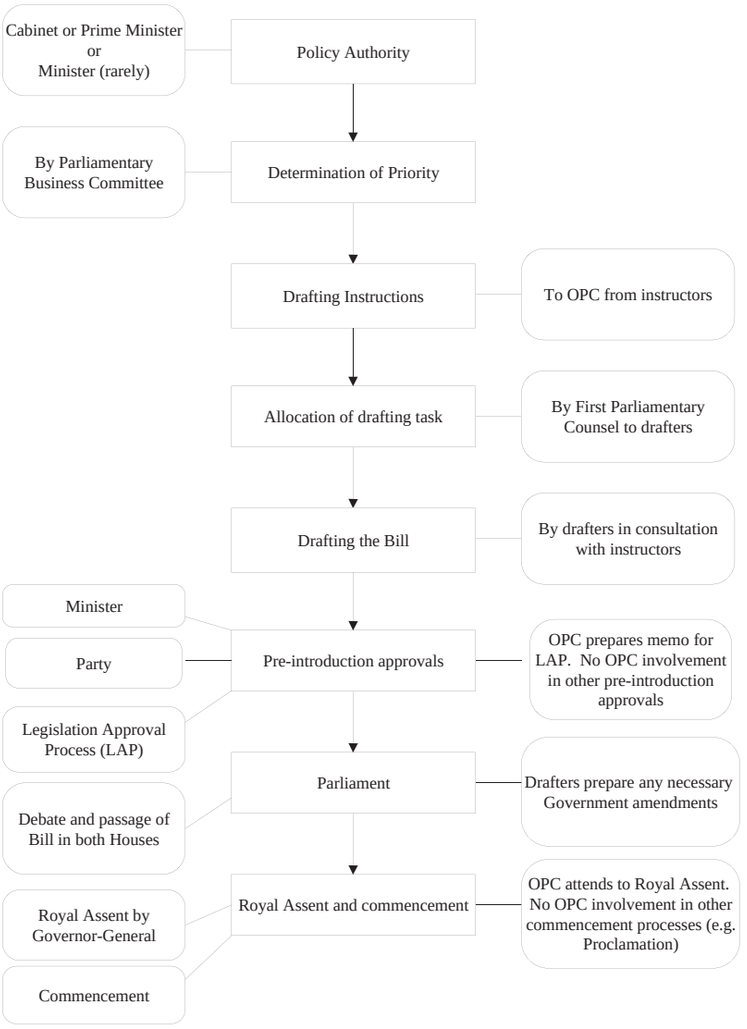
Acting First Parliamentary Counsel from January 2004, Peter served as an *ex officio* member of the Board of Taxation from that time. Appointed FPC on 13 May 2004 he quickly began implementing his vision for the Office. Keen to adopt innovative drafting approaches and tools where appropriate, he continued to champion simplicity and consistency in legislation, leveraging benefits from IT to help produce substantial

numbers of high quality Bills. He oversaw the development and introduction of several large and complex legislative packages, drafted to tight deadlines in challenging circumstances. The electronic database of existing and proposed laws was upgraded to improve both accessibility to consolidated legislation and management of the legislation process. OPC's corporate governance was strengthened, innovative workplace agreements supporting the equitable treatment of all staff were negotiated, and drafting resources were assured through careful recruitment and retention strategies. Practised at garnering other perspectives, Peter fostered a collegiate and professional atmosphere within the Office. Generous in sharing his own knowledge and administrative prowess, he promoted consultation and exchange between drafting offices in Australia and overseas, and arranged for the history of Commonwealth parliamentary drafting to be recorded. Serving as the Pacific region representative on the council of the Commonwealth Association of Legislative Counsel from 2009 to 2011, he was elected its President in February 2011. On 29 March 2011 the Attorney-General announced Peter's reappointment as First Parliamentary Counsel for a second seven-year term. Peter was awarded a Public Service Medal in January 2008, for outstanding public service in delivering critical legislative agenda at a time of significant change.

On 14 May 2008 Justice Michael Kirby invited a number of senior, and former, OPC drafters to a small reception in his chambers in the High Court. Held in honour of Justice Hilary Penfold's appointment to the ACT Supreme Court, the event also recognised the work of Commonwealth parliamentary drafters.

Appendices

The Legislation Process



OPC is responsible for drafting primary legislation—that is Acts of Parliament—for the Government. It does not deal with the process of making subordinate legislation, such as regulations or ordinances. Subordinate legislation is drafted either by the Office of Legislative Drafting and Publishing (OLDP) in the Attorney-General's Department or by the Department or authority that administers the Act under which the subordinate legislation is made.

Attorneys-General and Heads of Drafting 1901 – 2011

Attorney-General[1] [GOVERNMENT][2]	**Tenure**	**Head Of Drafting**
DEAKIN, Alfred [PROTECTIONIST]	1.1.1901 – 24.9.1903	**GARRAN, Sir Robert Randolph** GCMG QC Parliamentary Draftsman [also Secretary to the Attorney-General's Department from 1901, and Solicitor-General from 1916] 1 January 1901 – 9 February 1932
DRAKE, James George (Senator) [ALP]	24.9.1903 – 27.4.1904	
HIGGINS, Henry Bournes KC [FREE TRADE-PROTECTIONIST]	27.4.1904 – 17.8.1904	
SYMON, Sir Josiah Henry KCMG KC **(Senator)** [FREE TRADE-PROTECTIONIST]	18.8.1904 – 5.7.1905	
ISAACS, Sir Isaac Alfred GCB GCMG KC [PROTECTIONIST]	5.7.1905 – 12.10.1906	
GROOM, Sir Littleton Ernest KCMG KC [PROTECTIONIST]	12.10.1906 – 13.11.1908	
HUGHES, William Morris CH PC KC [ALP]	13.11.1908 – 2.6.1909	

[1] Attorney-General list prepared from the *Parliamentary Handbook of the Commonwealth of Australia* online edition as at 3 May 2011, with reference to the Attorney-General's Department history (*100 years: Attorney-General's Department – Achieving a Just and Secure Society*, Canberra 2001) and the It's An Honour website as at 3 May 2011.

[2] KEY: ALP = Australian Labour (later Labor) Party; CP = Country Party; LIB = Liberal Party; NCP = National Country Party; NPA = National Party of Australia; UAP = United Australia Party.

Attorney-General [GOVERNMENT]	**Tenure**	**Head Of Drafting**
GLYNN, Patrick McMahon KC [PROTECTIONIST-FREE TRADE-TARIFF REFORM]	2.6.1909 – 29.4.1910	
HUGHES, William Morris CH PC KC [ALP]	29.4.1910 – 24.6.1913	
IRVINE, Sir William Hill GCMG KC [LIB]	24.6.1913 – 17.9.1914	
HUGHES, William Morris CH PC KC [ALP / NATIONAL LABOUR / NATIONALIST]	17.9.1914 – 21.12.1921	
GROOM, Sir Littleton Ernest KCMG KC [NATIONALIST / NATIONALIST-CP]	21.12.1921 – 18.12.1925	
LATHAM, Sir John Greig GCMG PC KC [NATIONALIST-CP]	18.12.1925 – 22.10.1929	
BRENNAN, Francis [ALP]	22.10.1929 – 6.1.1932	
LATHAM, Sir John Greig GCMG PC KC [UAP]	6.1.1932 – 12.10.1934	**Knowles, Sir George Shaw** CBE Parliamentary Draftsman [also Secretary to the Attorney-General's Department and Solicitor-General] 10 February 1932 – 8 May 1946
MENZIES, Sir Robert Gordon KT AK CH PC KC [UAP-CP]	12.10.1934 – 20.3.1939	
HUGHES, William Morris CH PC KC [UAP-CP / CP-UAP / UAP / UAP-CP / CP-UAP]	20.3.1939 – 7.10.1941	

Attorney-General [GOVERNMENT]	Tenure	Head Of Drafting
EVATT, Herbert Vere PC KC [ALP]	7.10.1941 – 19.12.1949	
		BONIWELL, Martin Charles CBE Parliamentary Draftsman 9 July 1948 – 7 March 1949 [acting from 9 May 1946]
SPICER, Sir John Armstrong QC **(Senator)** [LIB-CP]	19.12.1949 – 14.8.1956	**EWENS, John Qualtrough** CMG CBE QC Parliamentary Draftsman 29 June 1949 – 28 June 1970 First Parliamentary Counsel – on creation of OPC 29 June 1970 – 17 November 1972
O'SULLIVAN, Sir Michael Neil KBE **(Senator)** [LIB-CP]	15.8.1956 – 10.12.1958	
BARWICK, Sir Garfield Edward John AK GCMG QC [LIB-CP]	10.12.1958 – 4.3.1964	
SNEDDEN, Sir Billy Mackie KCMG QC [LIB-CP]	4.3.1964 – 14.12.1966	
BOWEN, Sir Nigel Hubert AC KBE QC [LIB-CP]	14.12.1966 – 12.11.1969	
HUGHES, Thomas Eyre Forrest AO QC [LIB-CP]	12.11.1969 – 22.3.1971	
BOWEN, Sir Nigel Hubert AC KBE QC [LIB-CP]	22.3.1971 – 2.8.1971	

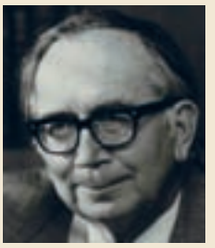
Attorney-General [GOVERNMENT]	**Tenure**	**Head Of Drafting**
GREENWOOD, Ivor John QC **(Senator)** [LIB-CP]	2.8.1971 – 5.12.1972	
WHITLAM, Edward Gough AC QC [ALP]	5.12.1972 – 19.12.1972	**Comans, Charles Kennedy** CBE QC First Parliamentary Counsel 18 November 1972 – 4 February 1977
MURPHY, Lionel Keith QC **(Senator)** [ALP]	19.12.1972 – 10.2.1975	
ENDERBY, Keppel Earl QC [ALP]	10.2.1975 – 11.11.1975	
GREENWOOD, Ivor John QC **(Senator)** [LIB-NCP]	11.11.1975 – 22.12.1975	
ELLICOTT, Robert James QC [LIB-NCP]	22.12.1975 – 6.9.1977	**QUAYLE, Bronte Clucas** CB OBE QC Sitara-e-Pakistan First Parliamentary Counsel 5 February 1977 – 30 January 1981
DURACK, Peter Drew QC **(Senator)** [LIB-NCP]	6.9.1977 – 11.3.1983	**KOLTS, Geoffrey Kolterman** OBE QC First Parliamentary Counsel 31 January 1981 – 30 June 1986
EVANS, Gareth John AO QC **(Senator)** [ALP]	11.3.1983 – 13.12.1984	

Attorney-General [GOVERNMENT]	**Tenure**	**Head Of Drafting**
BOWEN, Lionel Frost AC [ALP]	13.12.1984 – 4.4.1990	
DUFFY, Michael John ONZ [ALP]	4.4.1990 – 24.3.1993	**TURNBULL, Ian Maclean Lindsay** QC First Parliamentary Counsel 1 July 1986 – 30 June 1993
KERR, Duncan James Colquhoun [ALP]	24.3.1993 – 27.4.1993	
LAVARCH, Michael Hugh [ALP]	27.4.1993 – 11.3.1996	
WILLIAMS, Daryl Robert AM QC [LIB-NPA]	11.3.1996 – 7.10.2003	**PENFOLD, Hilary Ruth** PSM QC First Parliamentary Counsel 7 July 1993 – 18 January 2004
RUDDOCK, Philip Maxwell [LIB-NPA]	7.10.2003 – 3.12.2007	
McCLELLAND, Robert Bruce [ALP]	3.12.2007 – 14.12.2011	**QUIGGIN, Peter Alan** PSM First Parliamentary Counsel 14 May 2004 – [acting from January 2004]
ROXON, Nicola Louise [ALP]	14.12.2011 -	

Second Parliamentary Counsel
1970-2011

Charles Comans

29 June 1970 to
17 November 1972

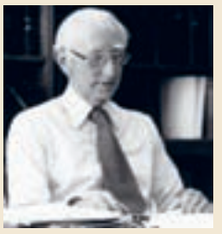


Bronte Quayle

29 June 1970 to
4 February 1977

Geoff Kolts

18 November 1972 to
30 January 1981



Jim Monro

5 February 1977 to
5 January 1981

Ron King

6 January 1981 to
28 January 1982

Ian Turnbull

31 January 1981 to
30 June 1986

Geoff Harders

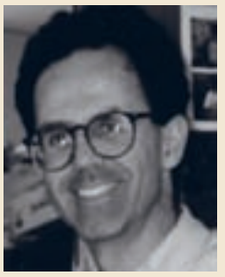
29 January 1982 to
9 March 1987

Hilary Penfold

18 December 1986 to
6 July 1993

Eric Wright

13 August 1987 to
6 March 1996



Tom Reid

11 February 1994 to
10 February 2001

Kerry Jones

12 April 1996 to
28 April 2005

Peter Quiggin

28 June 2001 to
12 May 2004

Vince Robinson

1 December 2004 to
13 January 2009

Marina Farnan

Appointed
18 August 2005

Iain McMillan

Appointed
27 March 2009

Commonwealth Parliamentary Drafters 1901-2011

John **Adams**
Paul **Argent**
Ivo **Astolfi**
Barry **Bates**
Vivienne **Bath**
Nils **Baumgartner**
Helen **Baxter**
Miss J **Baxter**
Sally **Beasley**
Ian **Bermingham**
David **Berryman**
Alec **Blunden**
Barbara **Boden**
Celica **Bojorge**
Martin **Boniwell**
Stephen **Bosci**
Marmion **Bray**
Lauren **Brennan**
Sue **Bromley**
Austin **Brown**
Adam **Browne**
Keith **Byles**
Anne **Caine**
Colin **Campbell**
Naomi **Carde**
Gilbert **Castieau**
Gordon **Castle**
Jack **Clark**
Kathryn **Cole**
Simone **Collins**
Charles **Comans**
Barry **Connell**
Rebecca **Considine**
Zoe **Copley**
Doug **Croker**
Alan **Cumming-Thom**
Derek **Cunningham**
Jean **Cunningham** (Pullen/Baker)
Bill **Cuppaidge**
Lindsay **Curtis**
Ian **Deane**
Mark **Derham**
Jim **Dorling**
Claire **Duggins**
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Andrew **Freeman**
Bill **Galbraith**
David **Galpin**
John **Gamble**
Robert **Garran**
Glen **Gibbs**
Olivia **Gossip**
James **Graham**
John **Grannall**
Geoff **Harders**
Philip **Harrison**
Cynthia **Heairfield** (Cheney)
Linley **Henzell**
Marcus **Hipkins**
Nick **Horn**
Philippa **Horner**
Leon **Hort**
David **Hunt**
Peter **Ilyk**
Roger **Jacobs**
Merv **James**

Alison **John**

Theresa **Johnson**

Kerry **Jones**

John **King**

Lindsay **King**

Ron **King**

Marie **Kinsella** (Sexton)

George **Knowles**

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Paul **Lanspeary**

Pierre **Le Guen**

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Jim **Lemaire**

John **Little**

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Mary **Lynch** (McKenzie)

Les **Lyons**

Douglas **Macinnis**

Scobie **Mackay**

Madeleine **Macdonald**

Seaforth **Mackenzie**

Karyn **MacMullin**

Hilary **Manson**

Brian **Martin**

Stephen **Mattingley**

John **McKenzie**

Don **McLellan**

Iain **McMillan**

Paul **Millington**

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Jim **Monro**

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Denis **O'Brien**

Tom **O'Callaghan**

Anne-Marie **O'Leary** (McGuigan)

John **Ollquist**

Robert **Osborne**

Claire **Parkhill**

Noreen **Peachey** (Duffin)

Dennis **Pearce**

Hilary **Penfold**

Sandra **Power**

Bronte **Quayle**

Peter **Quiggin**

Liza **Quinn**

Dawn **Ray**

Tom **Reid**

Steve **Reynolds**

Stan **Robinson**

Vince **Robinson**

Christine **Ronalds**

Indira **Rosenthal**

Victor **Ryan**

Matthew **Sait**

Horace **Sandars**

Richard **Sarvaas**

Merrilyn **Sernack**

Noel **Sexton**

Juliette **Shiels**

Ewart **Smith**

Lindsay **Statham**

Bernie **Sutherland**

Angela **Theodoropoulos** (Theodorelos)

Don **Thomas**

Laurie **Thornber**

Joe **Tipping**

Marjorie **Todd**

Geoff **Toms**

Anne **Treleaven**

Ted **Tudor**

Ian **Turnbull**

Adrian **van Wierst**

Dick **Viney**

Jeremy **Wainwright**
Toni **Walsh**
Paul **Wan**
Neil **Wareham**
Camilla **Webster**
Bill **West**
Rod **White**
Frank **Williamson**
Errol **Wilson**
George **Witynski**
Jonathan **Woodger**
Keith **Woodward**
Eric **Wright**
Michael **Wright**
Samara **Zeitsch**

Secretary to Representatives of the Government in the Senate

For over 50 years a drafter was assigned the role of Secretary to Representatives of the Government in the Senate. Initially placed in the Department of External Affairs in 1901, the position was moved to the Attorney-General's Department in 1904 and was allocated to the Parliamentary Drafting Division on its creation in 1948. Classification of the position often varied according to the status of the individual officer moving into it, and exact tenure in it was sometimes difficult to ascertain. During one period the position appeared to have been used to as a 'holding post' for an officer who was actually on military service. There were slight variations to the description of the position on occasion.

1901 – 1904	Department of External Affairs. George Ernest Flannery was appointed as Secretary to the Representatives of the Government in the Senate from 19 April 1901, until he resigned the appointment on 22 February 1904 to become an Associate to a Judge of the High Court.
1904	The position, in the Attorney-General's Department, was advertised several times in February 1904. Applicants were expected to have legal knowledge and training, to be conversant with Parliamentary practice and constitutional law, and to submit applications in their own handwriting. The advertisement noted that: 'During the recess the officer appointed will be required to assist with professional work in the Attorney-General's Department.'
1904 – 1910	Austin Graham Brown, from the State Public Service in Victoria, was appointed to the role from 2 March 1904. He was promoted from Professional Division, Class D to Class C while still in the same role in 1909, and resigned on 5 August 1910 when he was appointed Assistant Parliamentary Draftsman for the State of Victoria.
1910 – 1913	George Shaw Knowles was transferred to the position at the Class D level in November 1910. He left it when he was promoted to Chief Clerk and Assistant Parliamentary Draftsman from 1 June 1913.
1913 – 1915	Marmion Matthews Bray was promoted from Class E to be Secretary to Representatives of the Government in the Senate from 1 July 1913. On 31 July 1915 he transferred to a new office of Clerk in the Secretary's Office.

1915 – 1917	Martin Charles Boniwell was promoted from Class E to be Secretary to Representatives of the Government in the Senate from 19 July 1915. In mid-1917 he transferred to a redesignated 'Legal Assistant' position in the Secretary's Office.
1917 – 1918	Following Boniwell, Seaforth Simpson Mackenzie was promoted from Clerk Class E to be Secretary to Representatives of the Government in the Senate in June 1917, and then to the Secretary's Office in March 1918. However Mackenzie, who had joined the Attorney-General's Department in 1914, was commissioned as a Major in the Australian Naval and Military Expeditionary Force in March 1915 and went to Rabaul, New Guinea, as deputy judge advocate general, registrar-general and legal adviser to the Administrator. He ultimately returned to the Department in January 1921, and in June 1922 was appointed Principal Registrar of the High Court.
1918 – 1922	Gilbert Buckley Castieau was promoted to the position *vice* Mackenzie in January 1918, then succeeded Mackenzie in the Secretary's Office from July 1922. Castieau described the work of the position at this time as including: 'advising Ministers generally on all matters which came before the Senate, drafting Government amendment bills, and, with the approval of Ministers, drafting bills and amendments for private members, advising on matters submitted to the department principally on questions arising under the Nationality Act, defence and naval defence Act, Arbitration Act and ordinances of territories, and at the close of each year preparing for publication a review of legislation of the Commonwealth for the year.'
1923 – 1924	Secretary to Representatives of the Government in the Senate position shown as 'Vacant (Castieau)' in the 1923 and 1924 public service staff lists – there was no list in 1925.
1925 – 1927	Austin Brown transferred back to the position, at least from 1925 and possibly from as early as 1 July 1924. He had returned to the Commonwealth public service in 1914, when he was appointed as Secretary to the Inter-State Commission, and in 1923 was working in the Department of Home and Territories. On 30 June 1927 he was promoted to the new office of Inspector-General in Bankruptcy.
1927	John Frederick Gamble followed Brown as Secretary to Representatives of the Government in the Senate from 30 June 1927. He was later promoted to Legal Assistant in the Administrative Office of the Department.

1929	Patrick Joseph (Joe) Tipping, who had apparently replaced Gamble, was promoted from Secretary to Representatives of the Government in the Senate to Principal Legal Assistant, Third Division, Administrative from 27 June 1929. A popular and highly respected member of the Department he later became Assistant Secretary, Executive.
1929-1932	Horace Leighton Sandars was promoted from Legal Assistant, Administrative, to the position in 'The Senate', in July 1929, before returning to the Administrative Office at a higher level in April 1932.
1932-1939	Leslie Denis Alphonus (Les) Lyons was promoted from Legal Assistant, Third Division, Administrative Office to Secretary to Representatives of the Government in the Senate from 28 April 1932. Promoted again to the reclassified position in July 1938, he became a Senior Legal Officer in the Administrative Office in July 1939 and was later head of the Department's Advisings Division.
1939 – 1954	Following Lyons in the role, Thomas Louis (Louis) Legg was again promoted to the 'new office' of Secretary to the Representatives of the Government in the Senate in the Parliamentary Drafting Division in 1948. He retired from that role on 26 August 1954. At the time of the arbitration plaint in 1949, it was noted that the functions of the position, described as 'Secretary to the Ministers in the Senate', were to: attend Senate during sittings, advise Senate Ministers on all matters before the Senate, study the Bills introduced into the House of Representatives and 'advise Senate Ministers thereon', and give general assistance as required with the work of the Parliamentary Drafting Division.
1955-1961	Joseph (Jim) Monro was promoted to the Senior Legal Officer position vacated by Legg in September 1955. Monro carried out the role of Secretary to the Representatives of the Government in the Senate for some time, and was promoted to Principal Legal Officer in the Parliamentary Drafting Division in August 1961. He was appointed Second Parliamentary Counsel in February 1977 and retired in 1981.

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