THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PARLIAMENTARY COUNSEL AND OTHER LEGISLATION AMENDMENT BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General, the Honourable Nicola Roxon, MP)
PARLIAMENTARY COUNSEL AND OTHER LEGISLATION AMENDMENT BILL 2012

GENERAL OUTLINE

1. This Bill amends the Parliamentary Counsel Act 1970 to enable the transfer of the functions of the Office of Legislative Drafting and Publishing (OLDP) in the Attorney-General’s Department (AGD) to the Office of Parliamentary Counsel (OPC).

2. The main amendments will confer on OPC additional functions – being the functions performed by OLDP – relating to:
   - the drafting of subordinate legislation
   - making arrangements for the compilation, printing and publication of laws, and
   - other functions incidental to ensuring the quality of legislative instruments.

3. Other amendments will be made to the Acts Publication Act 1905 and Legislative Instruments Act 2003 (LIA) to provide the First Parliamentary Counsel with functions – being the functions performed by OLDP – relating to:
   - the maintenance of the Federal Register of Legislative Instruments, which is a publicly available electronic database of legislative instruments, and
   - promoting the legal effectiveness, clarity and intelligibility of legislative instruments.

4. Consequential amendments will also be made to the Family Law Act 1975, Federal Court of Australia Act 1976, Federal Magistrates Act 1999 and Judiciary Act 1903, to make it clear that OPC may provide assistance in the drafting of rules of court made under those Acts.

5. The proposed transfer of functions would improve the efficient and effective management of Commonwealth legislative drafting resources and improve the quality and consistency of Commonwealth legislation, in line with the Government’s commitment to clearer Commonwealth laws.

6. There are currently two Commonwealth offices responsible for the drafting of laws. OPC is an independent statutory agency within the Attorney-General’s portfolio, with responsibility for drafting Government bills and amendments. It consists of a First Parliamentary Counsel, two Second Parliamentary Counsel and approximately 55 staff employed in both drafting and non-drafting roles. By comparison, OLDP is a division within AGD, which has responsibility for drafting a range of subordinate legislation, as well as ensuring the compilation and publication of all laws, predominantly through the Federal Register of Legislative Instruments and ComLaw. OLDP is comprised of approximately 23 legislative drafters and 50 staff responsible for the registration, editing, compilation and publication of legislation.
7. Across other Australian jurisdictions, it is common practice for the one office to draft both bills and subordinate legislation.

8. In creating the one Commonwealth drafting office, the Bill would facilitate the introduction of a consistent approach for drafting bills and legislative instruments and, more broadly, maximise the use and flexibility of Commonwealth drafting resources. This is becoming increasingly necessary in order to efficiently and effectively deal with the expanding volume and complexity of Commonwealth legislation, acknowledging the vital role of regulations and other subordinate laws. It would also ensure the most efficient use of specialised information technology arrangements for the drafting of both bills and subordinate legislation.

9. The Government has taken into consideration the recommendations of the Strategic Review of Small and Medium Agencies in the Attorney-General’s Portfolio conducted by Mr Stephen Skehill, a former Secretary of the Attorney-General’s Department, in the development of this Bill.

Financial Impact Statement

10. The Bill will not have any net financial impact. The proposal will involve the transfer of funding from AGD to OPC to ensure that OPC is properly resourced to undertake all its additional functions. This will be achieved on a Budget neutral basis.

Regulation Impact Statement

11. This Bill will facilitate clearer laws, and potentially simplify some compliance tasks for business, by ensuring that all major new laws are drafted to a consistent and high standard. The Office of Best Practice Regulation has confirmed that a more detailed Regulation Impact Statement is not required (OBPR reference 13750).

Human Rights Statement of Compatibility

12. This Bill will advance the protection of human rights and the rule of law by ensuring that all major new laws are drafted to a consistent and high standard. It is fully compatible with human rights as defined in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.
NOTES ON CLAUSES

Clause 1  Short title

1. This clause provides that the Bill once enacted would be cited as the Parliamentary Counsel and Other Legislation Amendment Act 2012.

Clause 2  Commencement

2. This clause provides for the commencement of the Act.

3. There are two commencement dates for the provisions in the Bill:
   - item 1 provides that the formal clauses at the beginning of the Bill commence on Royal Assent, which is the standard approach for most Bills, and
   - item 2 provides that the substantive provisions at Schedules 1 and 2 of the Bill, that give effect to and reflect the transfer of OLDP to OPC, are to commence on a date to be determined by proclamation but no later than 6 months after Royal Assent. The provision for a date by proclamation allows some flexibility to ensure that all arrangements to give effect to the transfer are in place when the amendments come into force. The 6 month limit is standard for Commonwealth Bills and ensures that Parliament’s intent, if it passes this law, is given effect to within a finite time period.

4. The note at the end of the table explains that the table relates only to the provisions of the Act as originally enacted. The table will not be amended to deal with any later amendments of the Act.

5. Subclause 2(2) provides that any information in column 3 of the table is not part of the Act. It also clarifies that information may be edited or inserted in column 3 in any published version of the Act.

Clause 3  Schedule(s)

6. This clause provides that the Schedules to the Bill will amend the Acts set out in those Schedules in accordance with the provisions set out in each Schedule.
Schedule 1—Main amendments

Parliamentary Counsel Act 1970

Item 1 Section 3

7. Item 1 inserts a new subsection (1) at the beginning of section 3 of the Act, as item 4 will insert additional subsections. The current contents of section 3 will form part of the new subsection (1).

Item 2 At the end of paragraph 3(a)

8. Item 2 adds the word “and” at the end of paragraph 3(a), in order to reflect current drafting practice.

Item 3 Paragraph 3(c)

9. Item 3 repeals the existing paragraph 3(c) of the Act and substitutes it with new paragraphs 3(1)(c) to (j), which would confer on OPC the functions presently performed by OLDP, including:

- the drafting of subordinate legislation
- preparing compilations, reprints and information relating to Commonwealth laws
- making arrangements for printing and publishing Commonwealth laws, proposed laws, compilations and reprints of Commonwealth laws
- preparing and publishing Government Notices Gazettes, including Special and Periodic Gazettes
- providing assistance to foreign countries in relation to the drafting, printing, publishing of their laws or information relating to those laws, with the approval of the Minister, and
- other functions conferred by the regulations or incidental to any of the above functions.

10. The new paragraph 3(1)(g) makes it clear that the functions conferred on OPC or the First Parliamentary Counsel under the Acts Publication Act 1905, the LIA and any other laws of the Commonwealth would also fall within the scope of section 3. This includes the provision of assistance in the drafting of court rules under the Family Law Act 1975, Federal Court of Australia Act 1976, Federal Magistrates Act 1999 and Judiciary Act 1903.
11. The new paragraph 3(1)(h) reflects a range of international activities formerly performed by OLDP, including the undertaking of drafting for other countries, providing assistance with developing templates, information technology systems, conducting training and workshops and hosting overseas drafters in Australia. The performance of such functions require the approval of the Attorney-General (as the Minister administering the Parliamentary Counsel Act 1970) because they require a balancing of Australia’s foreign policy objectives with the significant resources implications of such work.

12. Paragraph 3(1)(i) provides for additional functions to be inserted by regulation, to provide flexibility to deal with evolving requirements. For example, electronic publication functions have largely emerged in the last two decades and may well continue to evolve. Similarly cross-jurisdictional work between the Commonwealth and States and Territories has become more prominent, e.g., drafting of model laws. No additional functions are planned at this time – the provision simply allows for an efficient response to future developments. Any regulation conferring new functions on OPC would be subject to tabling in Parliament and provision for disallowance.

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

13. Item 4 adds a new subsection 3(2) to clarify that the functions listed in subsection 3(1) are not exclusively granted to OPC. This provision makes it clear that there is no requirement that OPC draft all instruments listed at subsection 3(1). Under current arrangements, the drafting of some types of legislative instruments can be undertaken by agencies themselves.

14. However, the new subsection makes clear that directions under section 55ZF of the Judiciary Act 1903 may affect the extent to which other persons or bodies can engage in the activities listed at subsection 3(1). Section 55ZF of the Judiciary Act allows the Attorney-General to issue Legal Services Directions with respect to Commonwealth legal work. The Legal Services Directions 2005 provide that most drafting work is tied to government providers of legal services, in accordance with the Directions on Tied Areas of Commonwealth Legal Work at Appendix A.

15. Item 4 also adds a new subsection 3(3) to clarify that an approval made by the Minister in relation to the provision of assistance to a foreign country under paragraph 3(1)(h) is not a legislative instrument within the meaning of section 5 of the LIA. Such declarations would involve an application of paragraph 3(1)(h) to particular circumstances and thus are administrative rather than legislative in nature. Hence, this provision is not a substantive exemption from the operation of the LIA but, rather, merely declaratory of the existing law.

16. Finally, item 4 adds a new subsection 3(4) to define certain terms used in section 3:

   • the term “laws” of the Commonwealth is defined to include Acts and subordinate legislation
   • the term “publishing” encompasses electronic publication, and
the term “subordinate legislation” should be read as including Ordinances, Proclamations, regulations, rules and other legislative instruments made under Commonwealth laws. It will also include other instruments that are made under Commonwealth laws (such as instruments that are declared under section 7 of the LIA not to be legislative instruments: for example, certain instruments made under the Corporations Act 2001 and the Superannuation Industry (Supervision) Act 1993; instruments that have or are given the force of Commonwealth law (such as State or Territory instruments that are to be given the force of Commonwealth law through a uniform national scheme); or instruments that are otherwise related to, or have effect for the purposes of, Commonwealth laws (such as instruments relating to honours and awards for service under the Defence Act 1903).

Item 5 After section 16A

17. Item 5 inserts a new section 16B after section 16A of the Act.

18. Currently, OLDP charges fees for the performance of some of its functions, including the drafting of some instruments and the registration of instruments under the LIA. The new subsection 16B(1) will enable OPC to charge fees for functions that it will take over from OLDP. This will be done in line with the Australian Government Cost Recovery Guidelines and the Australian Government Competitive Neutrality Guidelines. However, the power to charge fees will not extend to OPC’s functions under paragraphs 3(1)(a) and (b). These are OPC’s current bill drafting functions, which will continue to be performed free of charge.

19. New section 16B reflects the fact that some of the new functions conferred on OPC may involve not only providing services to entities that are part of the Commonwealth, but also to other entities such as Commonwealth authorities that have their own legal personality and, particularly in the context of the new publishing functions, State and Territory entities, commercial organisations and private individuals. While OLDP’s current fee charging arrangements are not underpinned by a provision such as proposed section 16B, the drafting of this Bill provides an opportunity to give this arrangement a clearer and more transparent basis in legislation.

20. The new subsection 16B(2) makes it clear that any fee charged under subsection 16B(1) must not amount to taxation.

21. The new subsection 16B(3) provides that the fee is a debt due to OPC, on behalf of the Commonwealth, and is recoverable by OPC, on behalf of the Commonwealth, in a court of competent jurisdiction. This is a standard provision.

22. Item 5 also inserts a new section 16C into the Act.

23. OPC, and many of the entities for which it will perform functions, are within the constitutional concept of “the Commonwealth”. Technically, an entity that is part of the Commonwealth cannot impose fees on another such entity. However, there can be accounting transfers within Commonwealth accounts of the entities to put them in the same position as if a fee had actually been imposed. This is the concept of “notional liability” that is referred to in the new subsection 16C(1).
24. The new subsection 16C(2) provides that the Minister responsible for administering the *Financial Management and Accountability Act 1997* may give written directions for the purposes of ensuring that the fees under section 16B are notionally paid by entities that are within the concept of the Commonwealth. This includes directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.

25. The new subsection 16C(3) clarifies that a direction made under section 16C(2) is not a legislative instrument. This provision is not a substantive exemption from the operation of the LIA but rather, is declaratory of the existing law, as Ministerial directions are not legislative instruments within the meaning of section 5 of the LIA.

**Schedule 2—Other amendments**

**Part 1—Amendments**

*Acts Publication Act 1905*

**Item 1 Section 1A**

26. The Bill inserts numerous references to the First Parliamentary Counsel into the Acts Publication Act. For this reason, item 1 will insert a definition of “First Parliamentary Counsel” in section 1A of the Act.

27. The definition provides that any reference to the First Parliamentary Counsel means the person appointed to the position under subsection 4(1) of the *Parliamentary Counsel Act 1970*. Under subsection 2(4) of that Act the First Parliamentary Counsel is to, “under the Minister”, control OPC.

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

28. Item 2 removes the definition of “Secretary” from section 1A of the Act, as it is no longer required. This is because the Bill transfers all the functions, which were formerly the responsibility of the Secretary of AGD, to the First Parliamentary Counsel.

**Item 3 Subsection 4(1)**

29. Item 3 removes the reference to the “Secretary” in subsection 4(1) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to the maintenance of an electronic database of Acts and compilations of Acts.

**Item 4 Subsection 4(2)**

30. Item 4 removes the reference to the “Secretary” in subsection 4(2) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to making a declaration about what is considered to be an Acts database for the purposes of the Act.
Item 5 Subsection 4(3)

31. Item 5 removes the reference to the “Secretary” in subsection 4(3) of the Act and replaces it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to ensuring that Acts and compilations of Acts are available for the public to access.

Item 6 Subsection 8(1)

32. Item 6 removes all references to the “Secretary” that occur in subsection 8(1) of the Act and replaces them with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to making arrangements for an Acts database to be altered to rectify any errors regarding instances where the electronic text of the Act, or compilation of an Act, does not correspond with the text of the Act or does not represent the current state of the law.

Item 7 Subsection 8(2)

33. Item 7 removes the reference to the “Secretary” in subsection 8(2) of the Act and replaces it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to making annotations to explain the nature, day, time and reasons for a rectification made under subsection 8(1).

Family Law Act 1975

Item 8 Subsection 123(2A)

34. Item 8 removes the reference to the “Department” in subsection 123(2A) of the Act and replaces it with a reference to the “Office of Parliamentary Counsel”, established by subsection 2(1) of the Parliamentary Counsel Act 1970. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to the provision of assistance in the drafting of rules of court made under the Act, if the Chief Judge so desires.

Federal Court of Australia Act 1976

Item 9 Subsection 59(5)

35. Item 9 removes the reference to the “Department” in subsection 59(5) of the Act and replaces it with a reference to the “Office of Parliamentary Counsel”, established by subsection 2(1) of the Parliamentary Counsel Act 1970. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to the provision of assistance in the drafting of rules of court made under the Act, if the Chief Justice so desires.
Federal Magistrates Act 1999

Item 10 Subsection 81(4)

36. Item 10 removes the reference to the “Department” in subsection 81(4) of the Act and replaces it with a reference to the “Office of Parliamentary Counsel”, established by subsection 2(1) of the Parliamentary Counsel Act 1970. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to the provision of assistance in the drafting of rules of court made under the Act, if the Chief Federal Magistrate so desires.

Judiciary Act 1903

Item 11 Subsection 86(3)

37. Item 11 removes the reference to the “Department” in subsection 86(3) of the Act and replaces it with a reference to the “Office of Parliamentary Counsel”, established by subsection 2(1) of the Parliamentary Counsel Act 1970. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to the provision of assistance in the drafting of rules of court made under the Act, if the Chief Justice so desires.

Legislative Instruments Act 2003

Item 12 Subsection 4(1)

38. The Bill inserts numerous references to the First Parliamentary Counsel into the LIA. For this reason, item 12 will insert a definition of “First Parliamentary Counsel” in subsection 4(1) of the Act.

39. The definition provides that the First Parliamentary Counsel is the person appointed to the position under subsection 4(1) of the Parliamentary Counsel Act 1970.

Item 13 Subsection 4(1)

40. The Bill also inserts references to OPC in the LIA. For this reason, item 13 will insert a definition of “Office of Parliamentary Counsel” in subsection 4(1) of the Act.

41. The definition provides that OPC means the Office established by subsection 2(1) of the Parliamentary Counsel Act 1970. Under subsections 2(2) and 2(3) and section 16 of that Act, OPC consists of a First Parliamentary Counsel, two Second Parliamentary Counsel and staff engaged under the Public Service Act 1999.

Item 14 Subsection 4(1)

42. The Bill also inserts a reference to the Second Parliamentary Counsel into section 58 of the LIA (at item 45). For this reason, item 14 will insert a definition of “Second Parliamentary Counsel” in subsection 4(1) of the Act.
43. The definition provides that Second Parliamentary Counsel is the person who is appointed to the position under subsection 4(1) of the Parliamentary Counsel Act 1970.

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

44. Item 15 removes the definition of “Secretary” from subsection 4(1) of the Act as it is no longer required. This is because the Bill transfers all the functions, which were formerly the responsibility of the Secretary of AGD, to the First Parliamentary Counsel.

**Item 16 Subsection 16(1)**

45. Item 16 removes the reference to the “Secretary” in subsection 16(1) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC in relation to encouraging high standards in the drafting of legislative instruments through promoting the legal effectiveness, clarity, and intelligibility to anticipated users.

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

46. Item 17 removes the reference to “other Departments or agencies” in paragraph 16(2)(d) of the Act and substitutes it with “Departments or other agencies”. This is a technical amendment relating to the fact that OPC is an agency, rather than a Department. This paragraph will allow the First Parliamentary Counsel to cause steps to be taken to provide training in drafting and matters related to drafting to officers and employees of any Department, or of any other agency.

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

47. Item 18 removes the reference to “other Departments or agencies” in paragraph 16(2)(e) of the Act and substitutes it with “Departments or other agencies”. This is a technical amendment relating to the fact that OPC is an agency, rather than a Department. This paragraph will allow the First Parliamentary Counsel to cause steps to be taken to arrange the temporary secondment of staff to any Department, or to any other agency.

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

48. Item 19 removes the reference to the “Department” in paragraph 16(2)(e) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of this term corresponds with the amendment at item 18 and makes it clear that the temporary secondment, referred to above, relates to the secondment of OPC staff.
Item 20  Paragraph 16(2)(f)

49. Item 20 removes the reference to “other Departments or agencies” in paragraph 16(2)(f) of the Act and substitutes with “Departments or other agencies”. This is a technical amendment relating to the fact that OPC is an agency, rather than a Department. This paragraph will allow the First Parliamentary Counsel to cause steps to be taken to provide drafting precedents to officers and employees of any Department, or of any other agency.

Item 21  Subsection 16(3)

50. Item 21 removes the reference to the “Secretary” in subsection 16(3) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and means that the First Parliamentary Counsel must cause steps to be taken to ensure the appropriate use of gender-specific language in legislative instruments, and advise rule-makers and both Houses of Parliament where any inappropriate use of gender-specific language occurs in legislative instruments that are already in existence.

Item 22  Subsection 20(1)

51. Item 22 removes the reference to the “Secretary” in subsection 20(1) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers on the First Parliamentary Counsel a responsibility to maintain the Federal Register of Legislative Instruments.

Item 23  Subsection 20(1A)

52. Item 23 removes the reference to the “Secretary” in subsection 20(1A) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers on the First Parliamentary Counsel a responsibility to ensure that legislative instruments that are registered are available for the public to access.

Item 24  Subsection 23(1)

53. Item 24 removes all references of the term “Secretary” in subsection 23(1) of the Act and substitutes them with references to the “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers on the First Parliamentary Counsel the responsibility for correcting errors on the Federal Register of Legislative Instruments and explaining the error, the date and time of and reason for the correction.

Item 25  Subsection 25(1)

54. Item 25 removes the reference to the term “Department” in subsection 25(1) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and provides that a rule-maker, who is required to register a legislative instrument under this Division, must lodge the instrument with the Office of Parliamentary Counsel.
Item 26 Paragraph 25(2)(d)

55. Item 26 removes the reference to the term “Secretary” in paragraph 25(2)(d) of the Act and substitutes it with a reference to the “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and provides that, where the law-maker cannot comply with paragraph 25(2)(a), (b) or (c), they may submit other evidence of the text of the original legislative instrument that the First Parliamentary Counsel considers acceptable.

Item 27 Subsection 27(1)

56. Item 27 removes the reference to the term “Secretary” in subsection 27(1) of the Act and substitutes it with a reference to the “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers responsibility on the First Parliamentary Counsel to ensure that legislative instruments lodged under subsection 25(1), and explanatory statements lodged under subsection 26(1), are registered.

Item 28 Subsection 29(1)

57. Item 28 removes the reference of the term “Department” in subsection 29(1) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and provides that the legislative instruments required to be registered under section 28 of the Act, and made within the period referred to in the table under subsection 29(1) are to be lodged with the OPC, by the day specified in the table, unless otherwise provided under regulations.

Item 29 Subsection 29(2)

58. Item 29 removes the reference of the term “Department” in subsection 29(2) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and provides that the legislative instruments mentioned in the section are to be lodged for registration with OPC.

Item 30 Paragraph 29(3)(d)

59. Item 30 removes the reference to the term “Secretary” in paragraph 29(3)(d) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and means that, where the law-maker cannot comply with paragraph 29(3)(a), (b) or (c), they may submit other evidence of the text of the original legislative instrument that the First Parliamentary Counsel considers acceptable.
Item 31  Subsection 30(1)

60. Item 31 removes the reference to the term “Secretary” in subsection 30(1) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers responsibility on the First Parliamentary Counsel to ensure that legislative instruments lodged under section 29 are registered.

Item 32  Subsection 31(2)

61. Item 32 removes the reference to the term “Secretary” in subsection 31(2) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and means that, if a legislative instrument that is required to be registered cannot be registered due to technical difficulties, the First Parliamentary Counsel may cause the instrument to be published in the Gazette.

Item 33  Subsection 31(3)

62. Item 33 removes all references to the term “Secretary” in subsection 31(3) of the Act and substitutes them with references to the “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers on the First Parliamentary Counsel the responsibility for ensuring that any instrument published in a Gazette under section 31(2) of the Act, is entered in the Federal Register of Legislative Instruments as soon as practicable, with an annotation of the day and time that the instrument is taken to have been registered.

Item 34  Subsection 33(1)

63. Item 34 removes the reference to the term “Secretary” in subsection 33(1) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and means that, if a legislative instrument is amended, the First Parliamentary Counsel must ensure that an electronic compilation is registered either after the provision of the amending Act has commenced, or after the amending instrument is registered and has commenced.

Item 35  Subsection 33(2)

64. Item 35 removes all references to the term “Secretary” in subsection 33(2) of the Act and substitutes them with references to the “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and provides that if the First Parliamentary Counsel causes a compilation to registered in relation to a principal legislative instrument and it is subsequently disallowed in whole or in part, the First Parliamentary Counsel must ensure that the necessary annotations and changes are made to update the Federal Register of Legislative Instruments.
**Item 36  Section 34 (heading)**

65. Item 36 repeals the heading to section 34 of the Act and substitutes a new heading that (consistently with the amendments of the section being made by items 37, 38 and 39) refers to the First Parliamentary Counsel rather than the Secretary.

**Item 37  Subsection 34(1)**

66. Item 37 removes the reference to the term “Secretary” in subsection 34(1) of the Act and substitutes it with a reference to the “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and means that the First Parliamentary Counsel may give a written notice to the rule-maker of an amending legislative instrument requiring them to lodge an electronic compilation of the principal legislative instrument.

**Item 38  Subsection 34(2)**

67. Item 38 removes the reference to the term “Secretary” in subsection 34(2) of the Act and substitutes it with the term “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and means that the First Parliamentary Counsel may, where an Act amends a legislative instrument, give a written notice to a rule-maker of the principal legislative instrument requiring them to lodge an electronic compilation of the principal legislative instrument.

**Item 39  Subsection 34(3)**

68. Item 39 removes all references to the term “Secretary” in subsection 34(3) of the Act and substitutes them with references to the “First Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and means that the First Parliamentary Counsel may give written notice to a rule-maker of a legislative instrument that has been wholly or partly disallowed to lodge a revised electronic compilation of the amended principal legislative instrument that takes account of the disallowance.

**Item 40  Subsection 38(1)**

69. Item 40 removes the reference to the term “Department” in subsection 38(1) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers on OPC the responsibility for ensuring that a copy of each legislative instrument registered under Division 2 of Part 4 is delivered to both Houses of Parliament within 6 sitting days after registration.

**Item 41  Subsection 39(1)**

70. Item 41 removes the reference to the term “Department” in subsection 39(1) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers on OPC the responsibility to ensure that (where lodged) a copy of explanatory material is tabled at the same time as the legislative instrument.
**Item 42 Subsection 39(2)**

71. Item 42 removes the first occurring reference to the term “Department” in subsection 39(2) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and clarifies that, if a rule-maker fails to lodge an explanatory statement with the OPC before the legislative instrument is delivered, the rule-maker must provide to the particular House of Parliament a copy of explanatory material and a written statement as to why it was not provided at the same time as the legislative instrument.

**Item 43 Subsection 39(2)**

72. Item 43 removes the second and third references to the term “Department” in subsection 39(2) of the Act and substitutes them with the term “Office”. The replacement of the term reflects the transfer of functions from AGD to OPC and supports the change made by item 42.

**Item 44 Subsection 52(3)**

73. Item 44 removes the reference to the term “Department” in subsection 52(3) of the Act and substitutes it with the term “Office of Parliamentary Counsel”. The replacement of the term reflects the transfer of functions from AGD to OPC and confers on OPC the responsibility for providing a copy of the relevant list due for sunsetting under subsection 52(2) of the Act to the rule-maker responsible for the principal legislative instrument, as well as each provision of a legislative instrument appearing on the list.

**Item 45 Section 58**

74. Item 45 repeals the existing section 58 and substitutes it with a new section 58 in relation to the delegation of the First Parliamentary Counsel’s powers. The insertion of the new section reflects the transfer of functions from AGD to OPC and confers on the First Parliamentary Counsel the ability to delegate, through a signed instrument, any of his or her powers or functions under the Act to a Second Parliamentary Counsel, an SES employee in OPC or an SES employee in AGD.

75. Delegation of the First Parliamentary Counsel’s powers has been limited to the above listed officers, in order to ensure that delegations can only be made to appropriate senior level officers. Generally, it is expected that delegations will be to a Second Parliamentary Counsel or an SES employee in OPC. However, there may be situations in which it is appropriate to give a delegation to an SES employee in AGD. For example, AGD will continue to provide IT support in relation to ComLaw and the Federal Register of Legislative Instruments for some time, and delegations may be required for that purpose.
Part 2—Transitional and savings provisions

76. The provisions in this Part are intended to ensure the continuity of actions taken, and processes underway, under the Acts Publication Act 1905 and the LIA before the transfer of functions from AGD to OPC.

Item 46 Definitions

77. Subitem 46(1) defines the term “Secretary” as the Secretary of the Department (meaning AGD).

78. Subitem 46(2) clarifies that a reference to doing a thing includes a reference to making an instrument.

Item 47 Things done under the Acts Publication Act 1905

79. Subitem 47(1) provides that a thing done by or in relation to the Secretary under a provision of the Acts Publication Act 1905 before the transfer of functions is taken to have been done by or in relation to First Parliamentary Counsel under that provision (as amended). This will, for example, have the effect that the declaration, by the Secretary, of an Acts database under subsection 4(2) of that Act will be taken to have been made by First Parliamentary Counsel under that subsection (as amended).

80. Subitem 47(2) ensures that the time at which the thing was done remains unchanged.

Item 48 Things done under the Legislative Instruments Act 2003

81. Subitem 48(1) provides that a thing done by or in relation to the Secretary under a provision of the LIA (or of regulations under that Act) before the transfer of functions is taken to have been done by or in relation to First Parliamentary Counsel under that provision (as amended). This will, for example, have the effect that a rectification of the Federal Register of Legislative Instruments arranged by the Secretary under section 23 of the Act before the transfer will continue to have effect after the transfer.

82. Subitem 48(2) provides that a thing done by or in relation to AGD under a provision of the LIA (or of regulations under that Act) before the transfer of functions is taken to have been done by or in relation to OPC under that provision (as amended). This will, for example, have the effect that a legislative instrument lodged with the AGD for registration before the transfer will be taken to have been lodged with OPC.

83. Subitem 48(3) ensures that the time at which the thing was done remains unchanged.