

NSW Parliamentary
Counsel's Office

120th Anniversary

1878–1998

120 years of Parliamentary Drafting

From 1856 to 1878 the position of Parliamentary Draftsman was held by various lawyers on a part-time, fee-for-service basis.

In June 1878 Alexander Oliver was informed of the New South Wales Government's decision to appoint him as the Colony's first permanent salaried Parliamentary Draftsman to overcome difficulties with the then current system.

The modern Parliamentary Counsel's Office derives directly from the institution set up by Alexander Oliver during the years 1878–1892.

His appointment was gazetted on 16 July 1878, with effect from 1 June 1878.

The 120th anniversary of the establishment of the Parliamentary Counsel's Office therefore falls on 1 June 1998.

In those 120 years, 8,560 Public Acts have been drafted by the Office and passed by Parliament—from the *Vines Act 1878* to the *St Andrew's College Act 1998*.

This pamphlet has been produced to capture some of the history of the Parliamentary Counsel's Office and to mark the occasion of the 120th anniversary of its establishment.

I hope that it will also serve as a memento of the function held on 29 June 1998 for staff, their partners, and honoured guests to celebrate the anniversary.

The Office, while conscious of its history, has kept an active eye on contemporary trends and emerging future developments. Every aspect of its operations has been subject to intensive review and change over the last decade or so and I have no doubt that this pattern will continue.

The Office has enjoyed a long and stable role in connection with the government of New South Wales and I believe it has earned its reputation for professional excellence and dedication to public service.

Dennis Murphy, QC
June 1998

[2775]



NEW SOUTH WALES

Government Gazette.

PUBLISHED BY AUTHORITY.

No. 211.]

TUESDAY, 16 JULY.

[1878.

[2399]

Colonial Secretary's Office,
Sydney, 15th July, 1878.

HIS Excellency the Governor, with the advice of the Executive Council, has been pleased to appoint
ROBERT R. BAILEY, Esquire, Coonamble,
to be a Magistrate of the Colony.

MICHAEL FITZPATRICK.

[2400]

Colonial Secretary's Office,
Sydney, 12th July, 1878.

HIS Excellency the Governor, with the advice of the Executive Council, has been pleased to appoint
The Reverend **GEORGE CHARLES BODE**

to be Church of England Chaplain to the Troops stationed at the Batteries on the north side of the Harbour,—the appointment to take effect from the 1st January last.

MICHAEL FITZPATRICK.

[2398]

Attorney General's Department,
Sydney, 15th July, 1878.

HIS Excellency the Governor, with the advice of the Executive Council, has been pleased to appoint
ALEXANDER OLIVER, Esquire, M.A., Barrister-at-Law,

to be Parliamentary Draftsman,—from the 1st ultimo.

W. J. FOSTER.

[2231]

Colonial Secretary's Office,
Sydney, 3rd July, 1878.

IT is requested that the Agricultural Societies of the Colony that may be desirous of obtaining aid from the public funds under the conditions of the Vote for 1878, will forward their applications with the least convenient delay. In every case the application should be accompanied by a list, duly certified by the Secretary and Treasurer, showing the names of the Members, and the amount received from each as his annual subscription to the funds of the Society. Under the terms of the Vote the list should be strictly confined to money "raised by private annual subscriptions from the Members of such Societies."

MICHAEL FITZPATRICK.

MUNICIPAL INSTITUTIONS.

Colonial Secretary's Office,
Sydney, 24th June, 1878.

PETITION FOR A MUNICIPALITY.—MOLONG.

HIS Excellency the Governor, with the advice of the Executive Council, directs the publication, in accordance with section 10 of the Municipalities Act of 1867, of the substance and prayer of a Petition addressed to His Excellency, and signed by seventy persons, praying that their locality therein described, may be erected into a Municipal District.

MICHAEL FITZPATRICK.

A SHORT HISTORY OF THE PARLIAMENTARY COUNSEL'S OFFICE

compiled by Michael Flynn, Parliamentary Counsel's Office

June 1998

Legislative drafting in Australia has its origin in the role of Deputy Judge Advocate David Collins, who drafted orders and regulations for Governor Phillip and his successors in the decade following his arrival with the First Fleet in 1788.

With the passage of the New South Wales Act (1823) and the formation of the first Legislative Council in 1824, an Attorney General appointed by the Governor took on the role of drafting legislation, assisted by the Solicitor-General and Colonial Secretary.

With the advent of full self-government in 1856 the Attorney General's role changed from that of an appointed official to an elected Minister. Provision was made for legislative drafting functions to be taken over by two barristers working part-time and paid on a fee-for-service basis. The *Sydney Morning Herald* recounted "the boast of a lawyer that he could drive a coach and six through any Act of Parliament" and called for the appointment of professional drafters to ensure that legislation was effective and to avoid "an ingenious attorney [tearing] it to ribbons".

Increasing pressure of drafting work during the 1870s, combined with the need for a more co-ordinated approach, led to the decision by Parliament to appoint a permanent salaried Parliamentary Draftsman. In an atmosphere of heated political conflict and change, responsibility for the drafting role was passed between the Attorney General and the Minister for Justice. Among the unsuccessful applicants for the position was future Prime Minister Edmund Barton, then an ambitious young lawyer. Alexander Oliver (1829-1904) was appointed as the first permanent salaried Parliamentary Draftsman in a notice gazetted on 16 July 1878 with effect from 1 June 1878.

The position, which would be responsible to the Attorney General until 1991, required Oliver to undertake the following functions:

- drafting Bills sent by a Minister
- perusing and reporting on the effect of alterations in Bills during their passage through the Legislature
- perusing and reporting on all Bills introduced by private members
- making himself acquainted with the alterations from time to time in Imperial Statute Law, and reporting thereupon where any seemed adapted to the requirements of the colony

- perusing and reporting on all by-laws, rules and regulations submitted to the Attorney General
- preparing any Regulations for carrying out the intentions of any statute.

Alexander Oliver was born in Sydney in 1829. Undeterred by the loss of an arm in a youthful shooting accident, he became one of the first graduates of Sydney University. He went on to study at Oxford University before returning to practise at the Sydney Bar, also acting as part-time Parliamentary Draftsman (1865–1874) and Examiner of Land Titles (1874–1878). He was described as being “well connected, something of a *bon vivant*, seriously intellectual and very amusing company”.

From 1880–1885 Oliver and his staff occupied two rooms in the newly constructed Crown Law Offices at 237 Macquarie Street (demolished about 1970 to make way for the present Supreme Court Building). From 1885–1894 the Office occupied rooms in a series of Macquarie Street terraces (Nos 127, 135 and 217).

The modern Parliamentary Counsel’s Office derives directly from the institution set up by Oliver during the years 1878 to 1892. He also held the post of Registrar of Friendly Societies and Trade Unions. Assisted by a clerk and a messenger boy, Oliver drafted most Government legislation produced up to 1892, when he resigned to take up the Presidency of the Land Appeal Court.

Throughout his term as Parliamentary Draftsman, Oliver penned a series of anonymous political gossip columns for various newspapers. They were characterised by a sharp wit, shrewd observation and intimate knowledge of all the leading political figures of the day, including Sir Henry Parkes.

Oliver edited a number of legal reference publications, including *A Collection of the Statutes of Practical Utility, Colonial and Imperial, in force in New South Wales* (1879). He served on the Statute Law Consolidation Committee of 1893–1896 formed to regularise the mass of New South Wales legislation enacted since the 1820s. Arthur James Kelynack was an Assistant Parliamentary Draftsman from 1892 until August 1894, when he was appointed as a draftsman to the Statute Law Consolidation Commission under Justice Heydon. The Commission completed its work in 1904.

In 1892 Oliver was succeeded by John Leo Watkins (1849–1932). Born in Tasmania, Watkins had followed a similar educational path to Oliver: Sydney Grammar, Sydney University, Cambridge and the London Bar. The Public Service Inquiry Commission had recommended in 1891 that the staff of the Parliamentary Draftsman’s Office should be increased from three to four (three draftsmen and one messenger). It was also recommended that the Office should be responsible for “the proper preparation of a digest of the Statutes year by year, together with the consolidation of Acts of Parliament, and revision of the Statute Book with a view to the repeal of obsolete laws”.

From 1892 one of Watkins's younger co-draftsmen was Sydney-born Oxford graduate Hubert Murray (Sir John Hubert Plunkett Murray, 1861–1940). A tall (6'3"), powerfully built man, Murray had played rugby for the Harlequins and won the English amateur heavyweight boxing title. Murray, who described his four year term in the Office as "living death in Macquarie Street", departed in 1896 to lead a more adventurous life, commanding a mounted infantry brigade as a Lieutenant-Colonel with the Australian Forces in the Boer War and having a formative influence on the legal and administrative structures of Papua as its Lieutenant-Governor during the years 1908–1940.

In 1894 Watkins moved the Parliamentary Draftsman's Office to No 5 Richmond Terrace, a house facing the Domain on or near the site of the present State and Mitchell Libraries. Around 1897 the Office moved back to the Crown Law Offices at 237 Macquarie Street (which remained the home of the Parliamentary Draftsman's Office for more than seventy years until the move into the Goodsell Building in 1970). Watkins edited a number of legal publications and assisted in the drafting of early versions of the Federal Constitution. He served as Parliamentary Draftsman for 27 years until his retirement in 1919.

The years 1919–1922 saw two Parliamentary Draftsmen head the Office in quick succession: George Washington Waddell, a University Law Lecturer, and Cecil Edward Weigall (1870–1955), an Assistant Draftsman propelled into the job by Waddell's resignation. In 1922 Weigall left to become Solicitor General and was replaced by Allan Hammill Uther (1870–1956, educated at Sydney Grammar, Launceston Grammar School and St Paul's College, Sydney University). Admitted as a solicitor in 1894, Uther had worked in the NSW Crown Solicitor's Office (1900–1909) before his appointment as Examiner of Titles in the Registrar-General's Department. He headed the Parliamentary Draftsman's Office for 13 years, presiding over an expansion in the volume and complexity of company and conveyancing laws and the Lang Labour Government's social legislation.

In 1935 Uther was succeeded by Edward Bernard (Ned) Cahalan (1891–1953), Assistant Draftsman since 1921. As the product of a Liverpool convent school and a Sydney Marist Brothers High School, his appointment was a sign of enhanced opportunities for non-Anglo-Protestants in New South Wales. Cahalan held the post for 18 years until forced by illness to retire shortly before his death, aged 61, in 1953. The *Australian Law Journal* commented in an obituary notice that: "his ability and experience in this difficult and exacting office will be missed, as will the courteous assistance he so readily gave to all those who sought his advice".

Cahalan was succeeded in 1953 by Edwin Sidney (Ted) Bishop (1907–c1971), Assistant Parliamentary Draftsman since 1944 (educated at Fort Street Boys High School, Petersham and Sydney University). During Bishop's 17 year term the Office faced rapidly increasing demands for its services. In 1946 the Office had seven permanent staff and remained at roughly that strength until the mid-1960s, when the volume of legislation produced began to increase enormously. In 1978 the Parliamentary Counsel reported that the number of pages of Acts passed during the period 1965–1977 (18,229 pages) was 4.4 times larger than that produced in the decade 1955–1964 (3,163 pages). Bishop retired in 1971 after suffering a stroke and died shortly afterwards.

Henry Edwin (Harry) Rossiter (born 1922, educated at Canterbury High School and Sydney University) served as Parliamentary Counsel from 1971–1982 as the pace of change continued to accelerate. He was succeeded by the present Parliamentary Counsel, Dennis Murphy, who joined the Office in 1960.

In 1970 the Parliamentary Draftsman became known as the Parliamentary Counsel and the re-designated Parliamentary Counsel's Office moved into the newly constructed Goodsell Building on Chifley Square in the same year. From the late 1930s Government policy had dictated that proposals for new legislation should be presented to the Parliamentary Draftsman in the form of a draft Bill. In 1974 it was recognised that this policy had failed and it was reversed. Departments were required to submit their instructions in narrative prose form. A Bill was then to be drafted by the Parliamentary Counsel in consultation with the Department and submitted for Cabinet approval.

By 1978 the staff had been increased to 25 (17 legal officers and 8 support staff, including clerks, clerical assistants, typists and stenographers), but the Office continued to suffer from staff shortages and work overloads. The Office had taken on new tasks of producing master sets of legislation and reprinting Regulations as well as Acts, becoming the source of all official prints and reprints of legislation. The technical forms of legislative language were modernised and plain English policies implemented. The introduction of computers and other forms of information technology accelerated the pace of change and the Office took on an expanded publishing role with the closure of the Government Printing Office in 1989.

The decade leading up to 1998 has seen the staff levels vary between 45 and 50, with the aim of an establishment between 48 and 50. The 1997 output figures reflect the relatively constant and high workload, including 187 Bills introduced into Parliament, 236 amendments in committee and 683 Regulations and other instruments drafted, 892 opinions or other advices given on environmental planning instruments and 10,142 pages of reprints published. The print design of NSW legislation has been streamlined and modernised with a more user-friendly result that is in keeping with the Office's interest in furthering the use of plain language. The NSW Legislation Database compiled and maintained by the Office supplies clients with updated versions of Acts and Regulations in electronic form, including free access for the community through the Internet. The implementation of a three-year IT Project commencing in July 1998 will enhance the Office's role as an information-provider and will introduce new processes and products, particularly in the field of electronic publishing.

In 1991 the Parliamentary Counsel's Office was placed within the Premier's administration under the Director-General of The Cabinet Office, reflecting its integral role as part of the machinery of Government.

The Office provides a complete legislative drafting service for all Bills, Regulations and other instruments, as well as preparing amendments in committee for all members. While its principal function is to draft legislation for Government, current arrangements enable it to prepare legislation for any party or any member of Parliament.

While conscious of the past, the staff of the Parliamentary Counsel's Office have kept pace with current trends and are keeping an eye on future developments, combining the newer role of providing legislation and legislative material in electronic form, with an older but equally important body of skills in legislative drafting based on 120 years of experience.

Chronology of Parliamentary Draftsmen/ Parliamentary Counsel

1878 to 1998

Alexander Oliver	1878 to 1892
John Leo Watkins	1892 to 1919
George Washington Waddell	1919 to 1921
Cecil Edward Weigall	1921 to 1922
Allan Hammill Uther	1922 to 1935
Edward Bernard Cahalan	1935 to 1953
Edwin Sidney Bishop	1953 to 1971
Henry Edwin Rossiter	1971 to 1982
Dennis Robert Murphy	1982 to present

*Land Titles Office,
Sydney, June 12th 1878.*

Sir,

I have to acknowledge the receipt of your letter under date the 11th instant, and in reply thereto, to state that I feel deeply sensible of the distinguished honor conveyed by the offer to me of the appointment to the Office of Parliamentary Draftsman on the terms specified in your letter.

I accept the offer on those terms, and as involving the several duties enumerated by you, viz:—

- (1) Drafting Bills sent by a Minister.*
- (2) Perusing and reporting on the effect of alterations in Bills during their passage through the Legislature*
- (3) Perusing and reporting on all Bills introduced by Private Members*
- (4) Making myself acquainted with the alterations from time to time in Imperial Statute Law, and reporting thereupon where any seem adapted to the requirements of this Colony.*
- (5) Perusing and reporting on all By-laws, Rules and Regulations submitted to the Attorney General.*
- (6) Preparing any Regulations for carrying out the intentions of any Statute.*

*I have the honor to be Sir,
Your obedient Servant*

Alex Oliver

*The Secretary
to the Attorney General*

THE PARLIAMENTARY DRAFTSMAN

*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!*