

# CHARLES COMANS CBE QC

Australian Law Journal  
Obituary  
Commonwealth

# AUSTRALIAN LAW JOURNAL

## OBITUARY

Commonwealth

Charles Comans CBE QC

The former First Parliamentary Counsel of the Commonwealth, Charles Comans, died in Canberra on 12 September 2012, at the age of 97.

Charles Comans was a brilliant lawyer and fine draftsman of federal legislation, respected by his peers and by governments of differing politics. Born in Melbourne on 21 October 1914, he was educated at Christian Brothers' College, Victoria Parade, Melbourne, where he won a scholarship to St Kevin's High School. Which helped him to a further scholarship to study law at Melbourne University where he won the Jessie Leggatt Scholarship and the John Madden Exhibition, respectively in contracts and constitutional law. It was the latter that would become the companion for most of his life.

Comans was admitted to the Victorian Bar in 1936, the year in which he secured employment by the Commonwealth in the Taxation Office, in Canberra. For a short time he was seconded to be Registrar of the Supreme Court of the ACT. From there he moved to become a legal officer in the Attorney-General's Department (1938-48). In 1948, he discovered his *métier* as an assistant parliamentary draftsman. He rose to be First Assistant Parliamentary Draftsman in 1949, Second Parliamentary Counsel in 1970 and First Parliamentary Counsel, 1972-

77. His early years saw him work under John Q. Ewens (54 *ALJ* 105; 66 *ALJ* 870), then First Parliamentary Counsel, during highly pressured times and involved him in drafting novel federal laws, some of which were declared unconstitutional by the High Court, including the *Bank Nationalisation Legislation* of 1948 and the *Communist Party Dissolution Act*, 1950. But most survived. In all, he served under 14 Prime Ministers and 16 Attorneys-General of the Commonwealth.

In his spare time, Comans lectured (1945-48) at the Canberra University College, still then facilitated by the University of Melbourne. His strong academic grounding had seen him awarded an early Master of Laws Degree, winning this when he was only 21 years of age. He was studious, modest, self effacing but able to stand up to the powerful personalities with whom he was in daily contact. The expiry of the 30 year restriction on access to cabinet archives revealed, in 2005, that it was Comans who drafted the *Double Dissolution Proclamation* read for the Governor-General on the steps of Old Parliament House on 11 November 1975. This had been drafted on the instructions of the Governor-General under condition of secrecy from Prime Minister Whitlam, a course that occasioned distaste to Comans which he was later to express.

He retired from the Office of Parliamentary Counsel in 1977, with praise from both sides of the Parliament, including from Mr Whitlam who paid special tribute to his work on the heavy legislative programme of his Government.

In *Wong v Commonwealth of Australia* (2008) 236 CLR 573, the High Court (Heydon J. dissenting) upheld the legislative scheme of the *Health Insurance Act* 1973 (Cth) based on S 51(xxiiiA) of the *Constitution*. In doing so, several Justices referred to written advice given concerning its meaning to Dr Evatt and Mr Menzies at the time of the constitutional amendment. They mentioned C.K. Comans specifically (ibid 590, 657-658). He also played a leading part in drafting the former *Trade Practices Act* 1974 (Cth), the *Family Law Act* 1974 (Cth) and many other federal statutes in daily use throughout Australia.

Comans often contended that, at any one time, only about 50 lawyers in Australia were truly conversant with the *Constitution* and its jurisprudence. In his time he was certainly one of them. The importance of Parliamentary Counsel in our system of law is increasingly recognised. Charles Comans was an outstanding practitioner of the art.

He was appointed an Officer of the Order of the British Empire (OBE) in 1965 and a Commander (CBE) in 1977. In 1974, on the recommendation of Attorney-General Murphy, he was appointed a Commonwealth QC. A room is named in his honour in the Office of Parliamentary Counsel in Canberra. His oral history has been recorded by the National Library of Australia. He married in August 1944, Nancy Button and they had three sons and one daughter. Two sons pre-deceased him.

Until late in his life Charles Comans enjoyed bush walking and gardening. He swam daily until he was almost 90 and enjoyed golf until late in his life. He remained mentally alert to the end. He was an outstanding lawyer and officer of the Commonwealth.

MICHAEL KIRBY