



TASMANIA

CROWN PROCEEDINGS ACT 1993

No. 14 of 1993

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CROWN PROCEEDINGS ACT 1993

No. 14 of 1993

AN ACT to provide for suits by and against the Crown and for related purposes

[Royal Assent 12 May 1993]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Crown Proceedings Act 1993*.

Commencement

2—This Act commences on a day to be proclaimed.

Act to bind Crown

3—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities, but does not extend to the Crown in right of the Commonwealth except where specific provision is made for its application to the Crown in right of the Commonwealth.

Interpretation

- 4—In this Act, unless the contrary intention appears—
- “Crown” includes a Minister, an instrumentality or agency of the Crown and a prescribed person;
 - “judgment” means a judgment or order of a court;
 - “practitioner” means a practitioner within the meaning of the *Legal Practitioners Act 1959*;
 - “proceedings” means civil proceedings;
 - “State” includes a Territory of the Commonwealth;
 - “State Crown” means the Crown in right of this State.
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PART 2

PROCEEDINGS BY AND AGAINST THE CROWN GENERALLY

Proceedings by and against the Crown

5—(1) Subject to this Act, any other Act of the State, any relevant rules of court and the *Judiciary Act 1903* of the Commonwealth—

- (a) proceedings may be brought by or against the Crown in the same way as proceedings between subjects; and
 - (b) the same procedural and substantive law applies to proceedings by or against the Crown as in proceedings between subjects.
- (2) Subject to the regulations, proceedings may be brought by or against the Crown—
- (a) in the case of the State Crown—under the name “The State of Tasmania”; or

(b) in any other case—under the name in which the Crown could sue or be sued in the courts of its own jurisdiction.

Crown immunities, &c.

6—(1) This Act does not affect an immunity from, or a limitation on, liability that the Crown or an officer, employee or agent of the Crown enjoys by statute.

(2) This Act does not affect the application of section 6 (6) of the *Acts Interpretation Act 1931*.

Corresponding law of other States

7—(1) The Minister may, by notice in the *Gazette*, declare a law of another State relating to proceedings against the Crown to be a corresponding law for the purposes of this section.

(2) A declaration under subsection (1) may declare a law as from time to time in force to be a corresponding law.

(3) The corresponding law of each State other than Tasmania binds the State Crown.

Injunctive relief

8—(1) Subject to subsection (2), injunctive relief may be granted against the Crown.

(2) A mandatory injunction is not to be granted against the Crown.

Protection of confidentiality on grounds of public interest

9—This Act does not affect any rule of law under which a person may refuse to—

(a) discover or produce documents; or

(b) answer an interrogatory or other question—

on the ground that to do so would be prejudicial to the public interest.

Costs

10—(1) The State Crown is not required to pay court fees or charges in proceedings.

(2) Costs to which the State Crown is entitled are to be calculated as if the State Crown were liable to pay, and had paid, the fees and charges from which it is exempt under subsection (1).

Enforcement of judgments against the Crown

11—(1) A writ, warrant or similar process is not to be issued out of a court to enforce a judgment against the State Crown or the Crown in right of any other State.

(2) If a final judgment is given against the State Crown or the Crown in right of any other State, the court is to transmit a copy of the judgment to the Attorney-General of the relevant State.

(3) If the Attorney-General of this State receives a final judgment from a court of this or any other State, the Attorney-General is to give directions as to the manner in which the judgment is to be satisfied.

(4) A Minister, agency or instrumentality of the State Crown to which a direction is given under subsection (3) is authorized and required to carry out the direction.

(5) A direction under this section is sufficient authority for the appropriation of money from the Consolidated Fund or from funds of the relevant agency or instrumentality of the Crown.

Enforcement of judgments by the Crown

12—Subject to this Act and any relevant rules of court, a judgment recovered by the Crown may be enforced in the same manner as a judgment in proceedings between subjects, and in no other way.

PART 3**PROVISIONS OF SPECIAL APPLICATION TO THE STATE CROWN****Service, &c.**

13—(1) In this section “prescribed information” means information prescribed by rules made under the *Supreme Court Civil Procedure Act 1932*.

(2) When proceedings are brought against the State Crown, a statement containing any prescribed information is to be endorsed on, or annexed to, the process by which the proceedings are commenced.

(3) A failure to comply with subsection (2) does not render proceedings void unless the court is of the opinion that the State Crown has been prejudiced by that failure.

(4) Service on the State Crown of a process or document relating to proceedings is to be effected by service on the Director of Public Prosecutions except in the following cases:—

- (a) if special provision relevant to the service of the process or document is made by or under this Act—service is to be effected in accordance with that special provision;
- (b) if the party by whom, or on whose behalf, the process or document is to be served has notice that a practitioner other than the Director of Public Prosecutions is acting for the Crown in relation to the proceedings—service is to be effected on that practitioner.

Service of subpoenas, &c., on Ministers

14—(1) A subpoena or other process is not to be issued by a court, tribunal or other authority requiring a Minister to appear, in the Minister’s official capacity, to give evidence or produce documents without the leave of the court, tribunal or other authority.

(2) Leave pursuant to subsection (1) is not to be granted except after the Director of Public Prosecutions has been given reasonable notice in writing of the application and a reasonable opportunity to be heard on the application.

(3) A court, tribunal or other authority which grants leave pursuant to subsection (1) is, at the same time, to give directions as to the manner in which service is to be effected on the Minister.

Judicial notice of Attorney-General's appointment, &c.

15—(1) In legal proceedings, a document apparently signed by the Attorney-General is, in the absence of proof to the contrary, to be taken to have been duly signed by the Attorney-General.

(2) The Attorney-General's commission of appointment as Attorney-General is, on its production to the Supreme Court, to be noted in the records of the Court.

(3) An action, proceeding or matter, whether civil or criminal, by or against the Attorney-General does not abate and is not affected by any change of office-holder.

Right of Attorney-General to intervene in certain proceedings

16—(1) The Attorney-General may, on behalf of the Crown, intervene in proceedings—

- (a) in which the interpretation or validity of any law of the State or the Commonwealth is in question; or
- (b) in which—
 - (i) any legislative or executive power of the State or the Commonwealth, or of an instrumentality or agency of the State or the Commonwealth, is in question; or
 - (ii) any judicial power of a court or tribunal established under a law of the State or the Commonwealth is in question; or
- (c) in which the court grants leave to intervene on the ground that the proceedings raise an issue of public importance—

for the purpose of submitting argument on the question in issue.

(2) The Attorney-General has the same right of appeal in proceedings in which he or she intervenes under subsection (1) as a party to those proceedings.

(3) If the Attorney-General intervenes in proceedings under this section, the court may make an order for costs against the Crown to reimburse the parties to the proceedings for costs occasioned by the intervention, but the court is not to make such an order unless there are special circumstances which in the opinion of the court make it appropriate to do so.

(4) In this section, references to the Attorney-General extend not only to the Attorney-General for this State but also to the Attorney-General for any other State or the Commonwealth and references to the Crown have a correspondingly extended meaning.

Cases where right of Crown to legal representation is restricted

17—(1) This section applies to proceedings where an Act removes or restricts the right of a party to be represented in the proceedings by a practitioner.

(2) In proceedings to which this section applies, the State Crown or the Attorney-General, if a party to the proceedings, may be represented by an officer, employee or agent of the Crown (not being a practitioner) authorized to conduct the proceedings on behalf of the Crown or the Attorney-General.

(3) In proceedings to which this section applies, a document apparently signed by a Minister or the person having chief executive authority in an agency, instrumentality, department or administrative unit of the State Crown which appears to be an authorization of the kind contemplated by subsection (2) is, in the absence of proof to the contrary, to be taken as such an authorization.

PART 4

MISCELLANEOUS

Exclusion of certain proceedings

18—This Act does not affect—

- (a) proceedings for the recovery or enforcement of a fine, penalty or forfeiture, including the estreatment of a recognizance, imposed in criminal proceedings; or

- (b) a law, custom or procedure under which the Attorney-General is—
- (i) entitled to sue; or
 - (ii) liable to be sued; or
 - (iii) entitled to intervene in proceedings—
on behalf of the Crown on the relation, or on behalf, of any other person or persons or in any other capacity or for any other purposes.

Supreme Court Civil Procedure Act 1932 amended

19—Sections 54, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73 of the *Supreme Court Civil Procedure Act 1932** are repealed.

Fatal Accidents Act 1934 amended

20—The following section is inserted after section 1 of the *Fatal Accidents Act 1934*†:—

Act to bind Crown

2—(1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

(2) An action may be brought under this Act against the Crown in the same circumstances as it may be brought against a subject.

Magistrates Court (Small Claims Division) Act 1989 amended

21—The following section is inserted after section 2 of the *Magistrates Court (Small Claims Division) Act 1989*‡:—

Act to bind Crown

2A—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

* 23 Geo. V No. 58. For this Act, as amended to 1 September 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 52 of 1979, Nos. 9, 34 and 99 of 1982, Nos. 29 and 39 of 1984, Nos. 2, 73 and 119 of 1985, Nos. 9 and 40 of 1986 and No. 20 of 1990.

†25 Geo. V No. 30. for this Act, as amended to 1 January 1981, see the continuing Reprint of Statutes.

‡ No. 14 of 1989. Amended by No. 14 of 1989, No. 46 of 1991 and No. 28 of 1992.

Supreme Court Rules

22—Subject to the *Supreme Court Civil Procedure Act 1932*, the judges of the Supreme Court may make rules prescribing the particulars to be endorsed on, or annexed to, process to be served on the State Crown.

Regulations

23—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may regulate the service of process or other documents under this Act.

Administration of Act

24—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.

[Second reading presentation speech made in:—
House of Assembly on 31 March 1993
Legislative Council on 21 April 1993]

