

1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crown Proceedings Bill 1992

**A BILL
FOR**

**An Act to provide for suits by and against the Crown,
and for related purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Crown Proceedings Act 1992*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

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(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Chief Solicitor” means the person for the time being occupying, or performing the duties of, the office of Chief Solicitor in the Public Service;

10 “corresponding law” means a law of a State or another Territory that is declared by the regulations to be a law that corresponds to this Act;

“Crown” includes a Minister, instrumentality or agency of the Crown and a prescribed person;

15 “Government Solicitor” means the Government Solicitor for the Australian Capital Territory;

“judgment” means any judgment or order of a court;

“proceedings” means civil proceedings;

“Territory Crown” means the Crown in right of the Territory.

20 (2) In this Act, unless the contrary intention appears, a reference to the Attorney-General shall be read as a reference to the Minister designated Attorney-General by the Chief Minister and, where another Minister authorised by the Chief Minister to act on behalf of the Attorney-General so acts, as including a reference to that other Minister.

Application to the Crown

25 4. This Act extends not only to the Crown in right of the Territory but also (as far as the legislative power of the Territory admits) to the Crown in any other capacity but does not extend to the Crown in right of the Commonwealth unless a regulation relating to this Act is in force under the *Australian Capital Territory (Self-Government) Act 1988* of the
30 Commonwealth for the purposes of section 27 of that Act.

PART II—PROCEEDINGS BY AND AGAINST THE CROWN GENERALLY

Proceedings by and against the Crown generally

35 5. (1) Subject to this Act and any relevant rules of court and subject to 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 such proceedings as in the case of proceedings between subjects.
- 5 (2) Subject to the regulations, proceedings may be brought by or against the Crown—
- (a) in the case of the Territory Crown—under the name of the “Australian Capital Territory”; 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.
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Immunities and limitations of liability

6. This Act does not affect any immunity from, or limitation on, liability that the Crown enjoys by statute.

Corresponding laws of States and other Territories

- 15 7. The corresponding law of each State and other Territory binds the Crown in right of the Australian Capital Territory.

Injunctive relief

8. (1) Subject to subsection (2), injunctive relief may be granted against the Crown.
- 20 (2) Subject to subsection 17 (1) of the *Administrative Decisions (Judicial Review) Act 1989*, a mandatory injunction cannot be made against the Crown.

Protection of confidentiality on grounds of public interest

- 25 9. This Act does not affect any rule of law under which a person may refuse to discover or produce documents, or to answer an interrogatory or other question, on the ground that to do so would be prejudicial to the public interest.

Right of Attorneys-General of other jurisdictions to appear in proceedings

- 30 10. (1) The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, represent the Crown in right of the Commonwealth in any action, proceeding or matter (whether civil or criminal) in which the Crown in right of the Commonwealth is a party.
- 35 (2) The Attorney-General of a State or another Territory may, on behalf of the State or other Territory, represent the Crown in right of the State or other Territory in any action, proceeding or matter in which the Crown in right of the State or other Territory is a party.

Right of Attorney-General to intervene in proceedings

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

- 5 (a) in which the interpretation or validity of a law of the Territory or the Commonwealth is in issue; or
- (b) in which—
- 10 (i) legislation or executive powers of the Territory or the Commonwealth, or an instrumentality or agency of the Territory or the Commonwealth, are in issue; or
- (ii) judicial powers of a court or tribunal established under the law of the Territory or the Commonwealth are in issue;

for the purpose of submitting argument on the issue.

15 (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.

20 (3) Where the Attorney-General intervenes in proceedings under this section, and there are in the opinion of the court special reasons for making an order under this subsection, the court may make an order for costs against the Crown to reimburse the parties to the proceedings for costs occasioned by the intervention.

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

Court fees and charges

12. (1) The Territory Crown is not required to pay any court fee or charge in any proceedings.

30 (2) Any costs to which the Territory Crown is entitled shall be calculated as if the Territory Crown were liable to pay, and had in fact paid, fees and charges from which it is exempt under subsection (1).

Enforcement of judgments against the Crown

35 13. (1) No writ, warrant or similar process may be issued out of any court to enforce a judgment against the Crown in right of the Territory, a State or another Territory.

(2) Where a final judgment is given against the Crown in right of the Territory, the court shall transmit a copy of the judgment to the Chief Minister.

5 (3) Where a final judgment is given against the Crown in right of a State or another Territory, the court shall transmit a copy of the judgment to the Governor or Administrator of the relevant State or Territory.

(4) Where the Chief Minister receives a final judgment from a court of the Territory, a State or another Territory, he or she shall give directions as to the manner in which the judgment is to be satisfied.

10 (5) Any Minister, agency or instrumentality of the Territory Crown to which a direction is given under subsection (4) shall carry out the direction.

(6) A direction under this section is sufficient authority for the appropriation of money from the general revenue of the Territory or from funds of any agency or instrumentality of the Crown.

15 **Enforcement of judgments by the Crown**

14. 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 not in any other way.

20 **PART III—PROVISIONS OF SPECIAL APPLICATION TO THE TERRITORY CROWN**

Endorsement etc. of originating process

25 15. (1) Where any proceedings are brought against the Territory Crown, a statement shall be endorsed on, or annexed to, the process by which the proceedings are commenced, containing the prescribed information.

(2) A failure to comply with subsection (1) does not render proceedings void unless the court is of the opinion that the Territory Crown has been prejudiced by that failure.

Service generally

30 16. Service on the Territory Crown of any process or document relating to proceedings shall be effected by service on the Chief Solicitor except in the following cases:

- 35 (a) if special provision relevant to service of the process or document is made by or under this Act, service shall 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 some solicitor other than the

Government Solicitor is acting for the Crown in relation to the proceedings, service shall be effected on that other solicitor.

Service of subpoenas etc. on Ministers

5 **17. (1)** A subpoena or other process issued by a court, tribunal or authority requiring a Minister of the Crown to appear, in the Minister's official capacity, to give evidence, or to produce documents, shall be transmitted to the Chief Solicitor for service on the Minister.

10 **(2)** The Chief Solicitor shall, on receiving a subpoena or other process referred to in subsection (1), make reasonable endeavours to serve it on the Minister and shall provide proof of service to the court, tribunal or other authority.

15 **(3)** The Chief Solicitor, if unable to serve a subpoena or other process within a reasonable time, shall inform the court, tribunal or other authority of the reasons for not being able to effect service and, in that case, the court, tribunal or other authority may direct that service be effected in some other manner.

Judicial notice of Attorney-General's appointment etc.

20 **18. (1)** In any legal proceedings, a document apparently signed by the Attorney-General shall be presumed, in the absence of evidence to the contrary, to have been duly signed by the Attorney-General.

(2) The instrument by which the Attorney-General is so designated shall, on production to the Supreme Court, be noted in the records of the Court.

25 **(3)** No action, proceeding or matter (whether civil or criminal) by or against the Attorney-General abates or is affected by any change of office holder.

Cases where right of Crown to legal representation is restricted

30 **19. (1)** Where an Act removes or restricts the right of a party to be represented in proceedings by a legal practitioner, the Territory Crown or the Attorney-General, if a party to the proceedings, may be represented by an officer or servant of the Crown (not being a legal practitioner, an articled law clerk or a person who holds legal qualifications under the law of the Territory or of any other place) authorised to conduct the proceedings on behalf of the Crown or the Attorney-General.

35 **(2)** In any such proceedings a document apparently signed by a Minister of the Territory Crown or the Chief Executive Officer of an agency, instrumentality, department or administrative unit of the Territory Crown that appears to be an authorisation of the kind contemplated by subsection (1) shall, in the absence of proof to the contrary, be accepted as such an
40 authorisation.

PART IV—MISCELLANEOUS

Exclusion of certain proceedings

20. This Act does not affect—

- 5 (a) any proceedings for the recovery or enforcement of a fine, penalty or forfeiture (including the escheatment of a recognisance) imposed in criminal proceedings; or
- 10 (b) any law, custom or procedure under which the Attorney-General is entitled or liable to sue, or be sued, or 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.

Repeal

21. The *Crown Suits Act 1989* and the *Crown Suits (Amendment) Act 1991* are repealed.

15 **Regulations**

22. (1) The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- 20 (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- 25 (a) prescribe the particulars to be endorsed on or annexed to process to be served on the Territory Crown; and
- (b) regulate the service of process or other documents under this Act.