

(Reprint No. 1)

SOUTH AUSTRALIA

CROWN PROCEEDINGS ACT, 1972

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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APPENDIX LEGISLATIVE HISTORY

CROWN PROCEEDINGS ACT, 1972

being

Crown Proceedings Act, 1972, No. 41 of 1972
[Assented to 20 April 1972]¹

as amended by

Crown Proceedings Act Amendment Act, 1975, No. 36 of 1975 [Assented to 3 April 1975]
Crown Proceedings Act Amendment Act, 1977, No. 4 of 1977 [Assented to 21 April 1977]
Crown Proceedings Act Amendment Act, 1980, No. 47 of 1980 [Assented to 3 July 1980]²
Crown Proceedings Act Amendment Act, 1987, No. 40 of 1987 [Assented to 23 April 1987]³
Crown Proceedings Act Amendment Act (No. 2), 1987, No. 103 of 1987 [Assented to 17 December 1987]

¹ Came into operation 14 December 1972: *Gaz.* 14 December 1972, p. 2630.

² Came into operation 17 July 1980: *Gaz.* 17 July 1980, p. 230.

³ Came into operation 1 July 1987: *Gaz.* 28 May 1987, p. 1384.

An Act to provide for suits by and against the Crown; to amend the Supreme Court Act, 1935-1971; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Crown Proceedings Act, 1972*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement of Act

3. This Act is arranged as follows:

PART I—PRELIMINARY

PART II—CROWN PROCEEDINGS

PART III—AMENDMENT OF THE SUPREME COURT ACT, 1935-1971.

Interpretation

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

"judgment" means any judgment or order of a court except an interlocutory order;

"proceedings" means civil proceedings at law or in equity including proceedings in respect of a set-off or counterclaim, or by way of interpleader;

"proper officer" in relation to a court means—

(a) in the case of the Supreme Court—the Master or a deputy Master;

(b) in the case of a local court—the clerk;

or

(c) in any other case—the Registrar, clerk or other like officer of the court;

"the Crown" means—

(a) the Crown in right of this State;

(b) any Minister of the Crown in right of this State;

(c) any instrumentality or agency of the Crown in right of this State;

and

3.

(d) any person, body or authority declared by proclamation to be an instrumentality of the Crown to which this Act applies.

(2) The Governor may, by proclamation, declare any person, body or authority to be an instrumentality of the Crown to which this Act applies, and may by subsequent proclamation, vary or revoke any such proclamation previously made.

PART II

CROWN PROCEEDINGS

Proceedings by and against the Crown

5. (1) Subject to this Act, and any relevant rules of court, proceedings by or against the Crown may be instituted and prosecuted in any court in accordance with the ordinary practice and procedure of the court in proceedings between subject and subject.

(2) Any proceedings by or against the Crown may, subject to the regulations, be brought under the title "The State of South Australia".

Service, etc.

6. (1) Where any proceedings are instituted against the Crown, a statement must be endorsed upon or annexed to, the process by which the proceedings are instituted, setting forth such information as may be prescribed either generally or in respect of proceedings of a particular class.

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

(3) Service on the Crown of any process or document relating to proceedings must be effected by service on the Crown Solicitor except in the following cases:

- (a) if special provision relevant to service of the process or document is made by or under this Act, service must 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 Crown Solicitor is acting for the Crown in relation to the proceedings, service must be effected on that other solicitor.

Interlocutory orders, costs, court fees, etc.

7. (1) Subject to this Act, and any rules of court, in any proceedings to which the Crown is a party, the Crown may be required by the court—

- (a) to make discovery of documents and to produce documents for inspection;

or

- (b) to answer interrogatories,

in the same manner as if the proceedings were between subjects.

(2) An order under subsection (1) of this section shall specify the person by whom the documents are to be discovered or produced, or by whom the interrogatories are to be answered.

(3) This section does not affect the operation of any rule of law under which a person may refuse to discover or produce documents or to answer an interrogatory on the ground that to do so would be prejudicial to the public interest.

(4) Subject to the provisions of any other Act, in any proceedings to which the Crown is a party, the court shall have the same power to award costs against, or in favour of, the Crown as if the proceedings were between subjects.

(5) Notwithstanding the provisions of this or any other Act, the Crown is not required to pay any fee or charge under any Act for commencing or taking any step in any proceedings, but the Crown shall be entitled to costs in respect of such fees or charges as if it were required to pay and accordingly paid such fees and charges.

Service of subpoenas, etc., on Ministers

7a. (1) A subpoena or other process issued by a court, tribunal or other authority requiring a Minister of the Crown to appear before the court, tribunal, authority or some other person to give evidence of facts known to the Minister, or to produce documents possessed by the Minister, in his or her capacity as Minister, must be transmitted to the Crown Solicitor for service on the Minister.

(2) The Crown Solicitor must, upon receiving a subpoena or other process referred to in subsection (1), serve it on the Minister and provide proof of service to the court, tribunal or other authority.

(3) If the Crown Solicitor is unable to serve a subpoena or other process within a reasonable time, he or she must 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 by some other means.

Enforcement of judgments against the Crown

8. (1) No execution, attachment or similar process shall be issued out of any court against the Crown or any property of the Crown.

(2) Where judgment is given against the Crown, the proper officer of the court shall transmit to the Governor a copy of the judgment of the court.

(3) The Governor may give directions as to the manner in which the judgment is to be satisfied.

(4) The Treasurer or instrumentality of the Crown directed to satisfy the judgment is hereby authorized and required—

(a) to pay out of the General Revenue of the State, or the funds of that instrumentality, as the case may require, any moneys to be paid by the Crown in pursuance of the judgment;

and

(b) to perform any other act required to satisfy the judgment.

(5) The General Revenue or other moneys referred to in paragraph (a) of subsection (4) of this section are hereby appropriated to the extent necessary for the purposes of that subsection.

Enforcement of judgments by the Crown

9. Subject to this Act, and any relevant rules of court, any judgment recovered by the Crown in any proceedings may be enforced in the same manner as a judgment in proceedings between subjects, and not otherwise.

Liability in contract and tort

10. (1) Subject to this Act and any other Act—

- (a) the Crown shall be liable in respect of any contract made on its behalf in the same manner and to the same extent as a private person of full age and capacity is liable in respect of his contracts;

and

- (b) the Crown shall be liable in tort in the same manner and to the same extent as a private person of full age and capacity—
 - (i) for any tort committed by a servant, agent or other person acting in the employment, or on behalf, of the Crown;
 - (ii) in respect of any breach of duty that would, as between subjects, give rise to liability in tort.

(2) In any proceedings in tort against the Crown no defence based upon an actual or presumed independent discretion on the part of the person whose act or default is alleged to constitute the tort shall be admitted unless a similar defence would be admitted in the case of proceedings between subject and subject.

Abolition of special periods of limitation, etc., in proceedings against the Crown

11. (1) Notwithstanding the provisions of any other Act, the time for bringing proceedings against the Crown in tort or contract shall be the same as in the case of proceedings between subject and subject.

(2) Notwithstanding the provisions of any other Act, but subject to this Act, no notice of claim, or notice of proceedings, in any case of tort or contract shall be required unless that notice would be required in the case of an action between subject and subject.

Right of Attorney-General to appear in proceedings

12. (1) The Attorney-General may appear in any court and act for and represent the Crown in any action, proceeding or matter (whether civil or criminal) in which the Crown is interested.

(1a) The Attorney-General may intervene, on behalf of the Crown, in any proceedings (whether instituted before or after the commencement of the *Crown Proceedings Act Amendment Act, 1977*)—

- (a) in which the interpretation or validity of a law of the State or the Commonwealth is in question;

or

- (b) in which—

- (i) legislative or executive powers of the State or Commonwealth, or of an instrumentality or agency of the State or Commonwealth;

or

- (ii) judicial powers of a court or tribunal established under the law of the State or Commonwealth,

are in question,

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

(1b) Where the Attorney-General intervenes in proceedings in pursuance of subsection (1a) of this section, he shall have the same right of appeal in respect of any judgment or decision given in the proceedings as if he were a party to those proceedings.

(1c) Where the Attorney-General intervenes in proceedings under this section, the court may make such order for costs against the Crown as the court thinks fit to reimburse the parties to the proceedings against costs occasioned by the intervention.

(2) No action, proceeding or matter (whether civil or criminal) by or against the Attorney-General shall abate or be affected by any change in the person holding the office.

(3) Upon production by the Attorney-General to the Supreme Court of the commission of his appointment as Attorney-General it shall be noted in the record book of the court.

(4) Where an apparently genuine document purports to bear the signature of the Attorney-General, it shall be presumed in the absence of evidence to the contrary, that the document has been duly signed by the Attorney-General.

Cases where right of Crown to legal representation is restricted

12a. (1) Where any Act removes, or imposes any restriction upon, the right of the Crown or the Attorney-General to be represented in proceedings by a legal practitioner, the Crown or the Attorney-General may (without prejudice to any other rights and privileges) be represented by any 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 this State or of any other place) authorized to conduct the proceedings on behalf of the Crown or the Attorney-General.

(2) In any proceedings an apparently genuine document purporting to be under the hand of a Minister of the Crown or the Permanent Head of a department of the Public Service of the State and to authorize a person to conduct proceedings of a kind specified in the document on behalf of the Crown or the Attorney-General shall, in the absence of proof to the contrary, be accepted as proof that that person is duly authorized to conduct proceedings of that kind on behalf of the Crown, or the Attorney-General, as the case may require.

Rules of court

13. Rules of court may be made subject to and in accordance with the Supreme Court Act, or the Local and District Criminal Courts Act regulating the practice and procedure of the Supreme Court or the local court in proceedings under this Act.

Resolution of procedural difficulties

14. Where any doubt or difficulty arises with respect to the practice or procedure to be adopted, or the form of process to be used for the purpose of proceedings under this Act, any party or person interested in the proceedings may apply to the court before which the proceedings have been, or are proposed to be, brought or any judge thereof, for such directions as may be necessary or expedient in view of the doubt or difficulty, and the ordinary practice, procedure or form of process shall be modified, for the purpose of the proceedings, as the court or judge may approve.

Application of Act

15. This Act does not affect—

- (a) any proceedings for the recovery or enforcement of any fine, penalty or forfeiture (including the estreatment of a recognizance) imposed or adjudged by any court of competent jurisdiction;
- (b) any law, custom or procedure under which the Attorney-General is entitled or liable to sue, or be sued, or to intervene in any 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 whatsoever;

or

- (c) any proceedings instituted before the commencement of this Act.

Regulations

16. (1) The Governor may make such regulations as are contemplated by this Act, or as he considers necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of the foregoing, those regulations may—

- (a) prescribe the particulars to be endorsed upon or annexed to process to be served on the Crown;

and

- (b) regulate the service of process or other documents under this Act.

PART III

AMENDMENT OF THE SUPREME COURT ACT, 1935-1971

Short titles

17. (1) The *Supreme Court Act, 1935-1971*, as amended by this Part, may be cited as the *Supreme Court Act, 1972*.

(2) The *Supreme Court Act, 1935-1971*, is referred to in this Part as "the principal Act".

Repeal of Part V of principal Act

18. (1) Part V of the principal Act (except section 79a) is repealed.

(2) Section 79a of the principal Act is transposed into Part VII of the principal Act to follow section 118 and is redesignated section 118a.

APPENDIX**Legislative History**

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 3 of The Public General Acts of South Australia 1837-1975 at page 378.

Section 3:	amended by 40, 1987, s. 3
Heading preceding section 5:	amended by 40, 1987, s. 4
Section 6(3):	amended by 40, 1987, s. 5; substituted by 103, 1987, s. 2
Section 7(4):	inserted by 4, 1977, s. 2
Section 7(5):	inserted by 47, 1980, s. 3
Section 7a:	inserted by 40, 1987, s. 6
Section 8(5):	amended by 4, 1977, s. 3
Section 12(1a) - (1c):	inserted by 4, 1977, s. 4
Section 12a(1):	amended by 47, 1980, s. 4