

CROWN PROCEEDINGS ACT, 1972-1975**SUMMARY OF PROVISIONS****PART I****PRELIMINARY****Section**

- 1 Short title.
- 2 Commencement.
- 3 Arrangement of Act.
- 4 Interpretation.

PART II**PROCEEDINGS BY AND AGAINST THE CROWN**

- 5 Proceedings by and against the Crown.
- 6 Service, etc.
- 7 Interlocutory orders.
- 8 Enforcement of judgments against the Crown.
- 9 Enforcement of judgment by the Crown.
- 10 Liability in contract and tort.
- 11 Abolition of special periods of limitation, etc., in proceedings against the Crown.
- 12 Right of Attorney-General to appear on behalf of the Crown.
- 12a Cases where right of Crown to legal representation is restricted.
- 13 Rules of court.
- 14 Resolution of procedural difficulties.
- 15 Application of Act.
- 16 Regulations.

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

- 17 Short title.
- 18 Repeal of Part V of principal Act.

CROWN PROCEEDINGS ACT, 1972-1975

being

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

as amended by

Crown Proceedings Act Amendment Act, 1975, No. 36 of 1975 [Assented to 3rd April, 1975].

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

PART I

PRELIMINARY

1. This Act may be cited as the "Crown Proceedings Act, 1972-1975".

Short title.
Citation
amended by 36,
1975, s. 1 (3).

2. This Act shall come into operation on a day to be fixed by proclamation¹.

Commence-
ment.

3. This Act is arranged as follows:—

Arrangement of
Act.

PART I—PRELIMINARY

PART II—PROCEEDINGS BY AND AGAINST THE CROWN

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

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

Interpretation.

"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

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

(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
- (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

PART II

PROCEEDINGS BY AND AGAINST THE CROWN

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) Subject to the regulations, any process or document relating to proceedings by or against the Crown that is required to be served upon the Crown shall be served upon the Crown Solicitor.

Interlocutory
orders.

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.

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

Enforcement of judgments against 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.

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.

Enforcement of judgments by the Crown.

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

Liability in contract and tort.

(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.

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.

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

(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 on
behalf of the
Crown.

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.

(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.
S. 12a enacted
by 36, 1975,
s. 2.

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 an officer of the Public Service of the State (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 Act¹, or the Local and District Criminal Courts Act² 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

¹ Probably a reference to the Supreme Court Act, 1935, as amended, (now Supreme Court Act, 1935-1975).

² Probably a reference to the Local and District Criminal Courts Act, 1926-1972, (now Local and District Criminal Courts Act, 1926-1975).

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.

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. Regulations.

(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

PART III

AMENDMENT OF THE SUPREME COURT ACT, 1935-1971

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

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

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

Repeal of Part
V of principal
Act.

(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.
