



# CROWN PROCEEDINGS ACT 1992

No. 25 of 1992

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**ELIZABETHAE II REGINAE**

**A.D. 1992**

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**No. 25 of 1992**

**An Act to provide for suits by and against the Crown; to repeal the Crown Proceedings Act 1972; and for other purposes.**

[Assented to 14 May 1992]

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

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

**Commencement**

2. This Act will come into operation on a date to be fixed by proclamation.

**Repeal**

3. The *Crown Proceedings Act 1972* is repealed.

**Interpretation**

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

“corresponding law” means a law of another State relating to proceedings against the Crown declared by the regulations to be a law corresponding to this Act:

“Crown” includes—

(a) a Minister, instrumentality or agency of the Crown;

(b) a body or person declared by the regulations to be an instrumentality or agency of the Crown for the purposes of this Act:

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

“proceedings” means civil proceedings:

“State” includes a Territory of the Commonwealth:

“State Crown” means the Crown in right of this State.

(2) This Act extends not only to the Crown in right of the State but also (as far as the legislative power of the State admits) to the Crown in any other capacity 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.<sup>1</sup>

## PART 2

### PROCEEDINGS BY AND AGAINST THE CROWN GENERALLY

#### Proceedings by and against the Crown generally

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

(a) proceedings may be brought and conducted by or against the Crown in the same way as proceedings between subjects;

and

(b) the same substantive law is to be applied in such proceedings as in the case of 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 South Australia”;

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

#### Immunities and limitations of liability

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

(2) This Act does not make binding on the Crown any Act or statutory provision that would not, apart from this Act, be binding on the Crown.

#### Injunctive relief

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

(2) A mandatory injunction cannot be granted against the Crown.

#### Protection of confidentiality on grounds of public interest

8. This Act does not affect any rule of law under which the Crown or an officer or employee of the Crown 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 Attorney-General to appear in proceedings

9. (1) The Attorney-General may represent the Crown in any action, proceeding or matter (whether civil or criminal) in which the Crown is a party.

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

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

(b) in which—

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<sup>1</sup> Specific provision is made in section 9 for representation of the Crown in right of the Commonwealth in State proceedings.

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

or

(ii) judicial powers of a court or tribunal established under the law of the State or Commonwealth are in question;

or

(c) in which the Court grants leave to intervene on the ground that the proceedings raise issues of public importance,

for the purpose of submitting argument on issues of public importance.

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

(4) 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.

(5) 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.

#### **Enforcement of judgments against the Crown**

10. (1) No writ, warrant or similar process may be issued out of any court to enforce a judgment against the Crown.

(2) Where a final judgment is given against the Crown in right of this State or any other State, the court must transmit a copy of the judgment to the Governor of the relevant State.

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

(4) Any 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 General Revenue of the State or from the funds of any agency or instrumentality of the Crown.

(6) In this section—

“Governor” includes—

(a) in relation to the Australian Capital Territory—the Chief Minister;

(b) in relation to the Northern Territory—the Administrator.

#### **Enforcement of judgments by the Crown**

11. 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.

## PART 3

## PROVISIONS OF SPECIAL APPLICATION TO THE STATE CROWN

**Corresponding law**

12. The State Crown is, in relation to its activities in another State, bound by a corresponding law of that other State to the same extent as the Crown in right of that other State.

**Service, etc.**

13. (1) Where any proceedings are brought against the State Crown, a statement must 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 State Crown has been prejudiced by that failure.

(3) Service on the State 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.

**Leave to issue certain subpoenas, etc.**

14. (1) No subpoena or other process may be issued by a court, tribunal or other authority requiring a Minister of the Crown to appear, in the Minister's official capacity, to give evidence, or to produce documents, without the leave of the court, tribunal or other authority.

(2) Leave may be granted only after the Crown Solicitor has been given reasonable notice in writing of the application for the subpoena or other process and a reasonable opportunity to be heard on the application.

(3) A court, tribunal or other authority that grants leave must, at the same time, give directions as to the manner in which the Minister is to be served.

**Costs**

15. (1) The State Crown is not required to pay any fee or charge for commencing, or taking any step in, proceedings or for obtaining a transcript of any proceedings or evidence in any proceedings to which it is a party.

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

**Judicial notice of Attorney-General's appointment, etc.**

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

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

(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**

17. (1) Where an Act removes or restricts the right of a party to be represented in proceedings by a legal practitioner, the State 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 this State or of any other place) authorized to conduct the proceedings on behalf of the Crown or the Attorney-General.

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

**Crown Solicitor**

18. (1) The Crown Solicitor is a corporation sole which may act through the instrumentality of the person for the time being holding the office of Crown Solicitor or any other person to whom the office holder delegates his or her functions.

(2) The Crown Solicitor will act as such either under the name of the office holder for the time being or under the name "The Crown Solicitor for the State of South Australia".

PART 4  
MISCELLANEOUS

**Exclusion of certain proceedings**

19. This Act does not affect—

- (a) any proceedings for the recovery or enforcement of a fine, penalty or forfeiture (including the estreatment of a recognizance) imposed in criminal proceedings;
- (b) any law, custom or procedure under which the Attorney-General is entitled or liable to sue, or be sued, or to intervene in proceedings, on behalf of the Crown, on the relation of, or on behalf of, any other person or persons or in any other capacity or for any other purposes.

**Regulations**

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

(2) Without limiting the generality of subsection (1), those regulations may—

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

and

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

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor