

I certify that this is a copy of the authorised version of this Act as at 30 August 2024, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 30 August 2024.

K Woodward
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Dated 5 September 2024



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

1. Short title

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

2. Commencement

This Act commences on a day to be proclaimed.

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Part 1 – Preliminary

3. Act to bind Crown

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.

4. Interpretation

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 an Australian legal practitioner;

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**

5. Proceedings by and against the Crown

- (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.

6. Crown immunities, &c.

- (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.

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

7. Corresponding law of other States

- (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.

8. Injunctive relief

- (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.

9. Protection of confidentiality on grounds of public interest

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
-

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

10. Costs

- (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).

11. Enforcement of judgments against the Crown

- (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.

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

12. Enforcement of judgments by the Crown

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.

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**PART 3 – PROVISIONS OF SPECIAL APPLICATION
TO THE STATE CROWN**

13. Service, &c.

- (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 State Litigator 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 State Litigator is acting for the Crown in relation to the proceedings–

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service is to be effected on that practitioner.

14. Service of subpoenas, &c., on Ministers

- (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 State Litigator 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.

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

- (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.

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- (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.

16. Right of Attorney-General to intervene in certain proceedings

- (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.

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- (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.

17. Cases where right of Crown to legal representation is restricted

- (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.

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- (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

18. Exclusion of certain proceedings

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.

- 19. The amendments effected by this section have been incorporated into the authorised version of the *Supreme Court Civil Procedure Act 1932*.
- 20. The amendment effected by this section has been incorporated into the authorised version of the *Fatal Accidents Act 1934*.

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21. The amendment effected by this section has been incorporated into the authorised version of the *Magistrates Court (Small Claims Division) Act 1989*.

22. Supreme Court Rules

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.

23. Regulations

- (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.

24. Savings and transitional provisions consequent on *Crown Proceedings Amendment Act 2016*

- (1) In this section –

commencement day means the day on which the *Crown Proceedings Amendment Act 2016* commences.

- (2) If before the commencement day –

- (a) the Director of Public Prosecutions has been given notice under section 14(2), as in force immediately before the

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commencement day, of an application for leave to issue a subpoena or other process requiring a Minister to appear, in the Minister's official capacity, to give evidence or produce documents; but

- (b) the Director of Public Prosecutions has not been provided with an opportunity to be heard by the court, tribunal or other authority in relation to the matter –

that notice is taken, on and after the commencement day, to have been given to the Solicitor-General under section 14(2), as in force on and after the commencement day.

- (3) If before the commencement day –

- (a) the Director of Public Prosecutions has been given notice under section 14(2), as in force immediately before the commencement day, of an application for leave to issue a subpoena or other process requiring a Minister to appear, in the Minister's official capacity, to give evidence or produce documents; and
- (b) the Director of Public Prosecutions has been provided with an opportunity to be heard by the court, tribunal or other authority in relation to the matter; and
- (c) that court, tribunal or other authority has not determined the matter –

that court, tribunal or other authority, on or after the commencement day, may continue to

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determine the matter and, if appropriate, issue the subpoena or other process.

25. Savings and transitional provisions consequent on *State Litigator (Consequential Amendments) Act 2024*

(1) In this section –

commencement day means the day on which the *State Litigator (Consequential Amendments) Act 2024* commences.

(2) If, before the commencement day –

- (a) the Solicitor-General has been given notice under section 14(2), as in force immediately before the commencement day, of an application for leave to issue a subpoena or other process requiring a Minister to appear, in the Minister’s official capacity, to give evidence or produce documents; but
- (b) the Solicitor-General has not been provided with an opportunity to be heard by the court, tribunal or other authority in relation to the matter –

that notice, on and after the commencement day, is taken to have been given to the State Litigator under section 14(2), as in force on and after the commencement day.

(3) If, before the commencement day –

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- (a) the Solicitor-General has been given notice under section 14(2), as in force immediately before the commencement day, of an application for leave to issue a subpoena or other process requiring a Minister to appear, in the Minister's official capacity, to give evidence or produce documents; and
- (b) the Solicitor-General has been provided with an opportunity to be heard by the court, tribunal or other authority in relation to the matter; and
- (c) that court, tribunal or other authority has not determined the matter –

that court, tribunal or other authority, on or after the commencement day, may continue to determine the matter and, if appropriate, issue the subpoena or other process.

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NOTES

The foregoing text of the *Crown Proceedings Act 1993* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 30 August 2024 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Crown Proceedings Act 1993</i>	No. 14 of 1993	1.6.1995
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Crown Proceedings Amendment Act 2016</i>	No. 38 of 2016	30.10.2017
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>State Litigator (Consequential Amendments) Act 2024</i>	No. 7 of 2024	30.8.2024

TABLE OF AMENDMENTS

Provision affected	How affected
Section 4	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 66 of 2007, Sched. 1
Section 11	Amended by No. 4 of 2017, Sched. 1
Section 13	Amended by No. 38 of 2016, s. 4 and No. 7 of 2024, s. 7
Section 14	Amended by No. 38 of 2016, s. 5 and No. 7 of 2024, s. 8
Section 24	Substituted by No. 38 of 2016, s. 6
Section 25	Inserted by No. 7 of 2024, s. 9