

# CROWN PROCEEDINGS ACT 1988 No. 70

NEW SOUTH WALES



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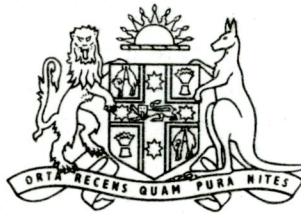
## SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

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**CROWN PROCEEDINGS ACT 1988 No. 70**

NEW SOUTH WALES



**Act No. 70, 1988**

An Act relating to civil proceedings by and against the Crown; to repeal the Claims against the Government and Crown Suits Act 1912; and for other purposes. [Assented to 23 November 1988]

**The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Crown Proceedings Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. In this Act—

“civil proceedings” includes civil proceedings at law or in equity, and also includes proceedings by way of preliminary discovery, cross-claim, counterclaim, cross-action, set-off, third-party claim and interpleader;

“Crown” means the Crown in right of New South Wales, and includes—

- (a) the Government of New South Wales; and
- (b) a Minister of the Crown in right of New South Wales; and
- (c) a statutory corporation, or other body, representing the Crown in right of New South Wales;

“judgment” includes every species of relief which a court can grant, whether interlocutory or final, and whether by way of order that anything be done or not done or otherwise, and also includes a declaration.

**Crown may sue**

4. The Crown may bring civil proceedings under the title “State of New South Wales” against any person in any competent court.

**Crown may be sued**

5. (1) Any person, having or deeming himself, herself or itself to have any just claim or demand whatever (not being a claim or demand against a statutory corporation representing the Crown) may bring civil proceedings against the Crown under the title “State of New South Wales” in any competent court.

(2) Civil proceedings against the Crown shall be commenced in the same way, and the proceedings and rights of the parties in the case shall as nearly as possible be the same, and judgment and costs shall follow or may be awarded on either side, and shall bear interest, as in an ordinary case between subject and subject.

**Service of documents on the Crown**

6. (1) In connection with civil proceedings by or against the Crown under the title “State of New South Wales” a document required to be served on the Crown shall be served (subject to any other Act or law) on the Crown Solicitor.

*Crown Proceedings 1988*

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(2) Rules of court may be made with respect to the mode of service of documents on the Crown Solicitor for the purposes of this section, including rules that personal service may be duly effected by leaving a document at the office of the Crown Solicitor.

**Satisfaction of judgment**

7. (1) The Treasurer shall pay (out of any money legally available) all money payable by the Crown under any judgment, including any interest, except to the extent that the money is paid by some person other than the Treasurer.

(2) Execution, attachment or similar process shall not be issued out of any court against the Crown or any property of the Crown.

**Demise of the Crown**

8. (1) No proceedings (whether civil or criminal) involving the Crown shall abate or be affected by the demise of the Crown.

(2) For the purposes of this section, "demise" includes a demise by or on abdication.

**Certain matters not affected**

9. (1) This Act (except for section 10) does not affect any law, custom or procedure under which civil proceedings may be brought by or against the Crown under any title.

(2) Without limiting subsection (1), this Act does not affect 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 of, or on behalf of, any other person or in any other capacity or for any other purpose whatever.

**Repeal of Claims against the Government and Crown Suits Act 1912 No. 27**

10. (1) The Claims against the Government and Crown Suits Act 1912 is repealed.

(2) Nothing in this Act affects proceedings commenced before the commencement of this section, and the repealed Act continues to apply in relation to any such proceedings as if this Act had not been enacted.

**Amendments**

11. Each Act specified in Schedule 1 is amended as set out in that Schedule.

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**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

(Sec. 11)

**Conveyancing Act 1919 No. 6****Section 197 (Official searches)—****Section 197 (3)—**

Omit “under the Claims against the Government and Crown Suits Act 1912”, insert instead “against the Crown under the Crown Proceedings Act 1988”.

**Dairy Industry Act 1979 No. 208****Section 27 (Determination of quantity of milk accepted by the Corporation)—****Section 27 (4)—**

Omit “, the Government of New South Wales or any nominal defendant appointed under the Claims Against the Government and Crown Suits Act, 1912”, insert instead “or the Government of New South Wales”.

**Heritage Act 1977 No. 136****Section 168 (Liability of members of Heritage Council etc.)—****Section 168 (2)—**

Omit “Government of New South Wales within the meaning of section 3 (1) of the Claims against the Government and Crown Suits Act 1912”, insert instead “Crown within the meaning of the Crown Proceedings Act 1988”.

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[*Minister's second reading speech made in—  
Legislative Assembly on 18 October 1988  
Legislative Council on 15 November 1988*]







## CROWN PROCEEDINGS BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are to repeal the Claims against the Government and Crown Suits Act 1912 (in particular, to abolish the procedure of appointing and suing nominal defendants in place of the Government) and to make new provisions for civil proceedings by and against the Crown.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a proclaimed day or days.

**Clause 3** contains definitions of terms used in the proposed Act, including "Crown" and "civil proceedings".

**Clause 4** provides that the Crown may sue under the title "State of New South Wales". It is a fundamental rule that the Crown may bring proceedings against a subject in the same way as a subject may sue another subject. The clause reflects this rule.

**Clause 5** provides that a person may sue the Crown under the title "State of New South Wales" except when the Crown is a statutory corporation. The clause further provides that when suing the Crown (whether under the title "State of New South Wales" or under any other title) the proceedings and rights of the parties will as nearly as possible be the same as in an ordinary case between citizens. The clause replaces section 4 of the Claims against the Government and Crown Suits Act 1912 and is expressed in similar terms. This accords with a recommendation of the New South Wales Law Reform Commission in its Report entitled "Proceedings by and against the Crown" (L.R.C. 24).

In paragraph 4.8 of the Report, the Commission recommended as follows:

"We consider that the substance of the key provision of ... (section 4 of the 1912 Act) ... namely that where a subject sues the Crown at law or in equity 'the proceedings and the rights of parties therein shall as nearly as possible be the same ... as in an ordinary case between subject and subject', should be retained.

*Crown Proceedings 1988*

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There is a body of judicial decisions which has evolved as to the effect of this formula. One of the advantages of retention of the formula is that the continuity of these decisions is preserved.”

**Clause 6** provides that, in the absence of any other procedure, documents can be served on the Crown (under the title “State of New South Wales”) by serving them on the Crown Solicitor.

**Clause 7** requires the Treasurer to pay all money payable by the Crown under any judgment unless there is someone else (such as a statutory corporation) who is able to pay the money on behalf of the Crown. The clause also provides that execution to enforce a judgment debt is not available against Crown property.

**Clause 8** provides that the death or abdication of the Sovereign will not affect any proceedings involving the Crown, whether civil or criminal.

**Clause 9** makes it clear that, in allowing civil proceedings to be taken by and against the Crown under the title “State of New South Wales”, the proposed Act does not prevent civil proceedings from being taken by and against the Crown under another title. An example is proceedings in which the Attorney General becomes a party on behalf of the Crown for the purpose of protecting the public interest. The proceedings may be to protect the general public welfare (e.g. to restrain a public nuisance) or to protect the welfare of a particular group (e.g. to enforce a charitable trust). In these proceedings the Attorney General is carrying out the Crown’s role as *parens patriae* (parent or guardian of the people). The proceedings may be taken on the Attorney General’s own initiative or on relation—that is, at the request of a person who accepts responsibility for the costs which may be ordered against the Crown.

**Clause 10** repeals the Claims against the Government and Crown Suits Act 1912. It also provides that the proposed Act will not affect any proceedings commenced before that repeal.

**Clause 11** gives effect to the Schedule of consequential amendments to other Acts.

**Schedule 1** makes consequential amendments to Acts containing references to the Claims against the Government and Crown Suits Act 1912. It omits those references and inserts instead references to the proposed Act.

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NEW SOUTH WALES



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11. Amendments

## SCHEDULE 1—CONSEQUENTIAL AMENDMENTS

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# CROWN PROCEEDINGS BILL 1988

NEW SOUTH WALES



No. , 1988

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## A BILL FOR

An Act relating to civil proceedings by and against the Crown; to repeal the Claims against the Government and Crown Suits Act 1912; and for other purposes.

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**The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Crown Proceedings Act 1988.

**Commencement**

- 5 2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. In this Act—

10 “civil proceedings” includes civil proceedings at law or in equity, and also includes proceedings by way of preliminary discovery, cross-claim, counterclaim, cross-action, set-off, third-party claim and interpleader;

“Crown” means the Crown in right of New South Wales, and includes—

- (a) the Government of New South Wales; and  
(b) a Minister of the Crown in right of New South Wales; and  
15 (c) a statutory corporation, or other body, representing the Crown in right of New South Wales;

20 “judgment” includes every species of relief which a court can grant, whether interlocutory or final, and whether by way of order that anything be done or not done or otherwise, and also includes a declaration.

**Crown may sue**

4. The Crown may bring civil proceedings under the title “State of New South Wales” against any person in any competent court.

**Crown may be sued**

25 5. (1) Any person, having or deeming himself, herself or itself to have any just claim or demand whatever (not being a claim or demand against a statutory corporation representing the Crown) may bring civil proceedings against the Crown under the title “State of New South Wales” in any competent court.

30 (2) Civil proceedings against the Crown shall be commenced in the same way, and the proceedings and rights of the parties in the case shall as nearly as possible be the same, and judgment and costs shall follow or may be awarded on either side, and shall bear interest, as in an ordinary case between subject and subject.

**35 Service of documents on the Crown**

6. (1) In connection with civil proceedings by or against the Crown under the title “State of New South Wales” a document required to be served on the Crown shall be served (subject to any other Act or law) on the Crown Solicitor.

*Crown Proceedings 1988*

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(2) Rules of court may be made with respect to the mode of service of documents on the Crown Solicitor for the purposes of this section, including rules that personal service may be duly effected by leaving a document at the office of the Crown Solicitor.

**5 Satisfaction of judgment**

7. (1) The Treasurer shall pay (out of any money legally available) all money payable by the Crown under any judgment, including any interest, except to the extent that the money is paid by some person other than the Treasurer.

10 (2) Execution, attachment or similar process shall not be issued out of any court against the Crown or any property of the Crown.

**Demise of the Crown**

8. (1) No proceedings (whether civil or criminal) involving the Crown shall abate or be affected by the demise of the Crown.

15 (2) For the purposes of this section, "demise" includes a demise by or on abdication.

**Certain matters not affected**

9. (1) This Act (except for section 10) does not affect any law, custom or procedure under which civil proceedings may be brought by or against  
20 the Crown under any title.

(2) Without limiting subsection (1), this Act does not affect 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 of, or on behalf of, any other person or in any other  
25 capacity or for any other purpose whatever.

**Repeal of Claims against the Government and Crown Suits Act 1912 No. 27**

10. (1) The Claims against the Government and Crown Suits Act 1912 is repealed.

(2) Nothing in this Act affects proceedings commenced before the  
30 commencement of this section, and the repealed Act continues to apply in relation to any such proceedings as if this Act had not been enacted.

**Amendments**

11. Each Act specified in Schedule 1 is amended as set out in that Schedule.

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**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

(Sec. 11)

**Conveyancing Act 1919 No. 6**Section 197 (**Official searches**)—

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## Section 197 (3)—

Omit “under the Claims against the Government and Crown Suits Act 1912”, insert instead “against the Crown under the Crown Proceedings Act 1988”.

**Dairy Industry Act 1979 No. 208**

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Section 27 (**Determination of quantity of milk accepted by the Corporation**)—

## Section 27 (4)—

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Omit “, the Government of New South Wales or any nominal defendant appointed under the Claims Against the Government and Crown Suits Act, 1912”, insert instead “or the Government of New South Wales”.

**Heritage Act 1977 No. 136**Section 168 (**Liability of members of Heritage Council etc.**)—

## Section 168 (2)—

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Omit “Government of New South Wales within the meaning of section 3 (1) of the Claims against the Government and Crown Suits Act 1912”, insert instead “Crown within the meaning of the Crown Proceedings Act 1988”.