

# NORTHERN TERRITORY OF AUSTRALIA

## CROWN PROCEEDINGS ACT

As in force at 17 May 2007

### Table of provisions

#### **Part 1 Preliminary**

1	Short title .....	1
2	Commencement .....	1
3	Act binds Crown .....	1
4	Definitions .....	1

#### **Part 2 Proceedings by and against Crown generally**

5	Proceedings by and against Crown generally .....	2
6	Crown immunities, &c. ....	2
7	Corresponding law of other States .....	2
8	Injunctive relief .....	2
9	Protection of confidentiality on grounds of public interest .....	2
10	Costs .....	3
11	Enforcement of judgments against Crown .....	3
12	Enforcement of judgments by Crown .....	3

#### **Part 3 Provisions of special application to Territory Crown**

13	Service on Territory Crown .....	4
14	Service of subpoenas, &c., on Ministers .....	4
15	Judicial notice of Attorney-General's appointment, &c. ....	4
16	Right of Attorneys-General to appear in proceedings, &c. ....	5
17	Right of Attorney-General to intervene .....	5
18	Notice to Attorney-General .....	5
19	Cases where right of Crown to legal representation is restricted .....	6

#### **Part 4 Miscellaneous**

20	Exclusion of certain proceedings .....	6
22	Regulations .....	7
23	Repeal .....	7

#### **ENDNOTES**



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 17 May 2007

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## CROWN PROCEEDINGS ACT

An Act to provide for suits by and against the Crown and for related purposes

### Part 1 Preliminary

#### 1 Short title

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

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Act binds Crown

This Act binds the Crown, not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly permits, in all its other capacities, but does not extend to the Crown in right of the Commonwealth.

#### 4 Definitions

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.

**proceedings** means civil proceedings.

**State** includes a Territory of the Commonwealth other than the Northern Territory.

**Territory Crown** means the Crown in right of the Territory.

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## **Part 2                      Proceedings by and against Crown generally**

### **5                      Proceedings by and against Crown generally**

- (1) Subject to this Act and any relevant rules of court, and subject to 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 Territory Crown, under the name "Northern Territory of Australia"; 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.**

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.

### **7                      Corresponding law of other States**

- (1) The Regulations may prescribe a law of a State relating to proceedings against the Crown to be a corresponding law for the purposes of this section.
- (2) The corresponding law of a State binds the Territory 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 made against the Crown.

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

This Act does not affect a rule of law under which a person may refuse to:

- (a) discover or produce documents; or

(b) answer an interrogatory or other question,

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

## **10 Costs**

- (1) The Crown is not required to pay court fees in proceedings.
- (2) Costs to which the Crown is entitled are to be calculated as if the Crown were liable to pay, and had paid, the fees from which it is exempt under subsection (1).

## **11 Enforcement of judgments against Crown**

- (1) A writ, warrant or similar process is not to be issued out of a court to enforce a judgment against the Territory Crown or the Crown in right of a State.
- (2) If a final judgment is given against the Territory Crown or the Crown in right of a State, unless the court orders otherwise, the registrar of the court shall, at the expiration of the period during which an appeal may be lodged, transmit a copy of the judgment to the Administrator, the Governor of the State or, in the case of the Australian Capital Territory, the Chief Minister of that Territory, as the case may be.
- (3) If the Administrator receives a final judgment from a court, including of a State, the Administrator shall give directions as to the manner in which the judgment is to be satisfied.
- (4) A Minister, agency or instrumentality of the Territory Crown to which a direction is given under subsection (3) is authorised and required to carry out the direction.
- (5) A direction under this section is sufficient authority for payment from the public moneys of the Territory and the Allocation for that purpose is established or increased to the extent necessary.

## **12 Enforcement of judgments by 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.

## **Part 3                      Provisions of special application to Territory Crown**

### **13                      Service on Territory Crown**

Service on the Territory Crown of a process or document relating to proceedings is to be effected by service on the Solicitor for the Northern Territory 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 legal practitioner other than the Solicitor for the Northern Territory is acting for the Territory Crown in relation to the proceedings, service is to be effected on that legal 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 Solicitor for the Northern Territory 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) shall, at the same time, 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 proceedings, a document apparently signed by the Attorney-General is, in the absence of proof to the contrary, to be presumed to have been duly signed by the Attorney-General.
- (2) The Attorney-General's instrument of appointment as Attorney-General is, on its production to the Supreme Court, to be noted in the records of the Court.
- (3) Proceedings (whether civil or criminal) by or against the Attorney-General do not abate and are not affected by any change of office-holder.

**16 Right of Attorneys-General to appear in proceedings, &c.**

- (1) The Attorney-General of a State may, on behalf of that State, represent the Crown in any proceedings (whether civil or criminal) in which the Crown in right of that State is a party.
- (2) The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, represent the Crown in any proceedings (whether civil or criminal) in which the Crown in right of the Commonwealth is a party.

**17 Right of Attorney-General to intervene**

- (1) The Attorney-General may, on behalf of the Crown, intervene in proceedings:
  - (a) that relate to a matter arising under, or involving the interpretation or validity of, a law of the Territory or the Commonwealth;
  - (b) in which:
    - (i) legislation or executive powers of the Territory or the Commonwealth, or an instrumentality or agency of the Territory or the Commonwealth, are in question; or
    - (ii) judicial powers of a court or tribunal established under the law of the Territory or Commonwealth are in question; or
  - (c) in which the court grants leave to intervene,for the purpose of submitting argument on the question in issue.
- (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 shall not make such an order unless there are special circumstances which in the opinion of the court make it appropriate to do so.

**18 Notice to Attorney-General**

- (1) Where proceedings relate to a matter arising under, or involving the interpretation of, a law of the Territory or the Commonwealth, a court may, on the application of a party or the Attorney-General or

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of its own motion, adjourn the proceedings and may direct a party to give notice of the proceedings to the Attorney-General.

- (2) If a court grants an adjournment under subsection (1), the court may make such order as to costs in relation to such an adjournment, including an order against the Territory, as the court thinks fit.

**19 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 legal practitioner.
- (2) In proceedings to which this section applies the Territory 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 legal practitioner) authorised to conduct the proceedings on behalf of the Crown or the Attorney-General.
- (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 unit of administration of the Territory Crown that appears to be an authorisation of the kind contemplated by subsection (2) is, in the absence of proof to the contrary, to be accepted as such an authorisation.

**Part 4 Miscellaneous**

**20 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 entitled or liable to sue, or be sued, or 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.



**22 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may regulate the service of process or other documents under this Act.

**23 Repeal**

The *Claims by and against the Government Act*, comprising Act No. 46 of 1978 and Act No. 59 of 1982, is repealed.

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## ENDNOTES

### 1

#### KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
Gaz = Gazette  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2

#### LIST OF LEGISLATION

***Crown Proceedings Act 1993 (Act No. 51, 1993)***

Assent date            27 September 1993  
Commenced            1 January 1994 (*Gaz* G48, 1 December 1993, p 2)

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date            18 June 1999  
Commenced            18 June 1999

***Crown Proceedings Amendment Act 2002 (Act No. 72, 2002)***

Assent date            11 December 2002  
Commenced            11 December 2002

***Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)***

Assent date            17 May 2007  
Commenced            s 10: nc; rem: 17 May 2007 (s 2)

### 3

#### LIST OF AMENDMENTS

s 4                    amd No. 7, 2007, s 16  
s 11                  amd No. 27, 1999, s 15  
s 13                  amd No. 72, 2002, s 2; No. 7, 2007, s 16  
s 19                  amd No. 7, 2007, s 16  
s 21                  rep No. 72, 2002, s 3