

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.

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

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.
