



Australian Capital Territory

Crown Proceedings Act 1992 No 60

Republication No 4

Republication date: 7 October 2002

Last amendment made by Act 2002 No 30

Amendments incorporated to 7 October 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Crown Proceedings Act 1992* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 7 October 2002. It also includes any amendment, repeal or expiry affecting the republished law to 7 October 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

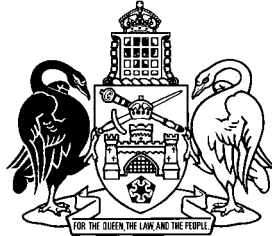
If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
7 October 2002



Australian Capital Territory

Crown Proceedings Act 1992

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Australian Capital Territory

Crown Proceedings Act 1992

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

Part 1 Preliminary

1 Name of Act

This Act is the *Crown Proceedings Act 1992*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Proceedings by and against the Crown generally

5 Proceedings by and against the Crown generally

- (1) Subject to this Act and any relevant rules of court and subject to the *Judiciary Act 1903* (Cwlth)—
 - (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 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) for the Territory Crown—under the name of the ‘Australian Capital Territory’; 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.
- (3) In this section:

proceedings, against the Crown, includes proceedings to attach earnings or other debts due or accruing from the Territory Crown to someone else.

6 Immunities and limitations of liability

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

7 Corresponding laws of States and other Territories

The corresponding law of each State and other Territory binds the Crown in right of the Australian Capital Territory.

8 Injunctive relief

- (1) Subject to subsection (2), injunctive relief may be granted against the Crown.
- (2) Subject to the *Administrative Decisions (Judicial Review) Act 1989*, section 17 (1), a mandatory injunction cannot be made 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 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.

10 Right of Attorneys-General of other jurisdictions to appear in proceedings

- (1) The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, represent the Crown in right of the Commonwealth in any action, proceeding or matter (whether civil or criminal) in which the Crown in right of the Commonwealth is a party.
- (2) The Attorney-General of a State or another Territory may, on behalf of the State or other Territory, represent the Crown in right of the State or other Territory in any action, proceeding or matter in which the Crown in right of the State or other Territory is a party.

11 Right of Attorney-General to intervene in proceedings

- (1) 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 Territory or the Commonwealth is in issue; or
 - (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 issue; or

- (ii) judicial powers of a court or tribunal established under the law of the Territory or the Commonwealth are in issue;

for the purpose of submitting argument on the 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, 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.
- (4) In this section:

Attorney-General includes the Attorney-General for the Commonwealth, the Attorney-General for each State and the Attorney-General for each other Territory.

Crown includes the Crown in right of the Commonwealth, the Crown in right of each State and the Crown in right of each other Territory.

12 Court fees and charges

- (1) The Territory Crown is not required to pay any court fee or charge in any proceedings.
- (2) Any costs to which the Territory Crown is entitled shall be calculated as if the Territory Crown were liable to pay, and had in fact paid, fees and charges from which it is exempt under subsection (1).
- (3) In this section:
carrying on a business does not include imposing or collecting—
 - (a) taxes; or
 - (b) levies; or

- (c) fees for licences, permits or any other form of authority.

Territory authority means a body corporate established by an Act, but does not include a body declared under the *Financial Management Act 1996*, section 3B not to be a Territory authority.

Territory Crown does not include a Territory authority so far as the authority carries on business.

13 Enforcement of judgments against Territory Crown

- (1) A writ or similar process must not be issued out of any court to enforce a judgment against the Territory Crown.
- (2) If—
 - (a) a final judgment is given against the Territory Crown; and
 - (b) the judgment has not been paid; and
 - (c) the judgment has not been appealed against or stayed (or, if it has, the appeal has been disallowed or discontinued or the stay has been removed); and
 - (d) at least 21 days have elapsed since the judgment was given;the party in whose favour the judgment was given may give a copy of the judgment to the Treasurer.
- (3) If the Treasurer receives a copy of a final judgment under subsection (2), the Treasurer must give directions about how the judgment is to be paid unless the Treasurer is satisfied that the judgment can be, or has been, paid in another way.
- (4) A direction under this section that requires payment of public money of the Territory operates to authorise payment of the money.
- (5) The *Financial Management Act 1996*, section 6 (Necessity for appropriation) does not apply to a payment made in accordance with a direction under this section.

- (6) A direction under this section that requires payment of an amount from the funds of a Territory authority or instrumentality provides sufficient authority for the payment.

- (7) In this section:

Territory Crown—see section 12 (3).

13A Enforcement of judgments against Crown in right of a State or another Territory

- (1) A writ or similar process must not be issued out of any ACT court to enforce a judgment against the Crown in right of a State or another Territory.
- (2) If a final judgment is given by an ACT court against the Crown in right of a State or another Territory, the court must give a copy of the judgment to the Governor or Administrator of the State or Territory.

14 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 way as a judgment in proceedings between subjects, and not in any other way.

Part 3

Provisions of special application to the Territory Crown

15 Endorsement etc of originating process

- (1) If any proceedings are brought against the Territory Crown, a statement shall be endorsed on, or annexed to, the process by which the proceedings are begun, 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 Territory Crown has been prejudiced by that failure.

16 Service generally

- (1) Any process or document relating to proceedings must be served on the Territory Crown by serving the process or document on the chief solicitor.
- (2) However—
 - (a) if this Act makes special provision about service of the process or document—the process or document must be served in accordance with the special provision; and
 - (b) if the party serving the process or document has notice that a lawyer other than the government solicitor is acting for the Crown in relation to the proceedings—the process or document must be served on that lawyer.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

17 Service of subpoenas etc on Ministers

- (1) A subpoena or other process issued by a court, tribunal or authority requiring a Minister of the Crown to appear, in the Minister's official capacity, to give evidence, or to produce documents, shall be transmitted to the chief solicitor for service on the Minister.
- (2) The chief solicitor shall, on receiving a subpoena or other process referred to in subsection (1), make reasonable endeavours to serve it on the Minister and shall provide proof of service to the court, tribunal or other authority.
- (3) The chief solicitor, if unable to serve a subpoena or other process within a reasonable time, shall inform the court, tribunal or other authority of the reasons for not being able to effect service and, in that case, the court, tribunal or other authority may direct that service be effected in some other way.

18 Judicial notice of Attorney-General's appointment etc

- (1) In any legal proceedings, a document apparently signed by the Attorney-General shall be presumed, in the absence of evidence to the contrary, to have been duly signed by the Attorney-General.
- (2) The instrument by which the Attorney-General is so designated shall, 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.

19 Cases where right of Crown to legal representation is restricted

- (1) If an Act removes or restricts the right of a party to be represented in proceedings by a lawyer, the Territory Crown or the Attorney-General, if a party to the proceedings, may be represented by an officer or servant of the Crown (other than a lawyer, an articled law clerk or a person who holds legal qualifications under the law of the ACT or of any other place) authorised to conduct the proceedings on behalf of the Crown or the Attorney-General.
- (2) In any such proceedings a document apparently signed by—
 - (a) a Minister of the Territory Crown;
 - (b) the chief executive who has control of an administrative unit;
or
 - (c) the chief executive officer of an agency or instrumentality of the Territory Crown;

that appears to be an authorisation of the kind contemplated by subsection (1) shall, in the absence of proof to the contrary, be accepted as such an authorisation.

Part 4 Miscellaneous

20 Exclusion of certain proceedings

This Act does not affect—

- (a) any proceedings for the recovery or enforcement of a fine, penalty or forfeiture (including the escheatment of a recognisance) imposed in criminal proceedings; or
- (b) any law, custom or procedure under which the Attorney-General is entitled or liable to sue, or be sued, or 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.

21 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision with respect to—
- (a) the details to be stated or to accompany process served on the Territory Crown; and
 - (b) the service of process or other documents under this Act.

Dictionary

(see s 2)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- Territory authority
- Territory instrumentality.

chief solicitor means the person performing the duties of Chief Solicitor in the public service.

corresponding law means a law of a State or another Territory that is declared by the regulations to be a law that corresponds to this Act.

Crown includes a Minister, instrumentality or agency of the Crown and a prescribed person.

judgment means any judgment or order of a court.

proceedings means civil proceedings.

Territory Crown means the Crown in right of the Territory.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Crown Proceedings Act 1992 No 60

notified 28 October 1992 (Gaz 1992 No S174)

s 1, s 2 commenced 28 October 1992 (s 2 (1))

remainder commenced 15 January 1993 (s 2 (2) and Gaz 1993 No S5)

as amended by

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2 and see Gaz 1993 No S165)

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 24

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Magistrates Court (Enforcement of Judgments) Act 1994 No 61 s 73, s 74

notified 11 October 1994 (Gaz 1994 No S197)

s 1, s 2 commenced 11 October 1994 (s 2 (1))

s 73, s 74 commenced 10 April 1995 (s 2 (2) and Gaz 1995 No S75)

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 No S380)

s 1, s 2 commenced 1 December 1997 (s 2 (1))

commenced 1 June 1998 (s 2 (2))

Justice and Community Safety Amendment Act 2001 No 9 sch 1

notified 8 March 2001 (Gaz 2001 No 10)

commenced 8 March 2001 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 93

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 93 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Justice and Community Safety Legislation Amendment Act 2002 No 27 pt 6

notified LR 9 September 2002
 s 1, s 2 commenced 9 September 2002 (LA s 75)
 pt 6 commenced 7 October 2002 (s 2 (2))

Statute Law Amendment Act 2002 No 30 pt 3.13

notified LR 16 September 2002
 s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
 pt 3.13 commenced 17 September 2002 (s 2 (1))

4 Amendment history

Name of Act

s 1 sub 2001 No 9 amdt 1.8

Dictionary

s 2 sub 2001 No 9 amdt 1.8

Notes

s 3 def **chief solicitor** am 1994 No 38 sch 1 pt 24
 om 2001 No 9 amdt 1.9
 def **government solicitor** om 2001 No 9 amdt 1.9
 defs reloc to dict 2001 No 9 amdt 1.10
 om 2001 No 9 amdt 1.11
 ins 2002 No 30 amdt 3.140

Application to the Crown

s 4 om 1993 No 44 sch 2

Proceedings by and against the Crown generally

s 5 am 1994 No 61 s 73; 2002 No 30 amdt 3.141

Right of Attorney-General to intervene in proceedings

s 11 am 2002 No 30 amdt 3.142

Court fees and charges

s 12 am 2001 No 9 amdt 1.12

Enforcement of judgments against Territory Crown

s 13 am 1994 No 61 s 74
 sub 2002 No 27 s 18

Enforcement of judgements against Crown in right of a State or another Territory

s 13A ins 2002 No 27 s 18

Service generally

s 16 am 1997 No 96 sch 1
 sub 2002 No 30 amdt 3.143

Endnotes

5 Earlier republications

Cases where right of Crown to legal representation is restricted

s 19 am 1994 No 38 sch 1; 2001 No 9 amdt 1.13

Regulation-making power

s 21 sub 2001 No 9 amdt 1.14
am 2001 No 44 amdt 1.1012

Regulations

s 22 om 2001 No 9 amdt 1.14

Dictionary

dict ins 2001 No 9 amdt 1.15
am 2002 No 27 s 19
def **chief solicitor** ins 2001 No 9 amdt 1.15
def **corresponding law** reloc from s 3 2001 No 9 amdt 1.10
def **Crown** reloc from s 3 2001 No 9 amdt 1.10
def **judgement** reloc from s 3 2001 No 9 amdt 1.10
def **proceedings** reloc from s 3 2001 No 9 amdt 1.10
def **Territory Crown** reloc from s 3 2001 No 9 amdt 1.10

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 61	10 April 1995
2	Act 2001 No 44	12 September 2001
3	Act 2002 No 30	17 September 2002

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Crown Proceedings Act 1992

NOTES—continued