

1989-90-91

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

CROWN SUITS (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

Circulated by authority of  
Terry Connolly MLA, Attorney General

EXPLANATORY MEMORANDUM  
CROWN SUITS (AMENDMENT) BILL 1991

**Outline**

The *Crown Suits (Amendment) Bill 1991* amends section 8 of the *Crown Suits Act 1989*.

Section 8 of the *Crown Suits Act 1989* is intended to be a machinery provision. It displaces certain old advantages that the Crown had in Court proceedings and ensures that the procedural rights of the Crown in a suit are the same as those of the other party to the suit.

However, a number of decisions of the High Court [*Maguire v Simpson* (1977) 139 CLR 362 and *Commonwealth v Evans Deakin Industries Ltd* (1986) 66 ALR 412] may have extended the application of section 8. The High Court decisions concerned a similar Commonwealth provision (section 64 of the *Judiciary Act 1903*). The decisions held that the similar Commonwealth provision may give a person substantive rights in an action which they would not have had in the absence of the provision.

Because of the similarity of the Commonwealth and ACT provisions, the High Court decisions may, without the benefit of the proposed amendments, affect the interpretation of the *Crown Suits Act 1989*.

The modifications ensure that section 8 of the *Crown Suits Act 1989*:

- apply to matters of procedure only; and
- does not give a party to a suit substantive rights which the party would not have save for the operation of the section.

**Financial Considerations**

This Bill has no implications for revenue or expenditure.

### Clause Notes

Clause 1 - the Act may be cited as the Crown Suits (Amendment) Act 1991.

Clause 2 - the Principal Act is the Crown Suits Act 1989.

Clause 3(1) - amends the Principal Act by adding a new subsection 8(2) which ensures that section 8 of the Crown Suits Act 1989 does not apply to alter the substantive rights of the Territory or of any person wishing to bring a suit against the Crown in right of the Territory.

Clause 3(2) - provides that the amendment effected under clause 3(1) applies only in relation to suits brought after the commencement of the Act.