

Queensland



ANNO VICESIMO NONO

ELIZABETHAE SECUNDAE REGINAE

No. 2 of 1980

An Act to consolidate and amend the law relating to proceedings by or against the Crown and the recovery of certain debts due to the Crown and for related purposes

[ASSENTED TO 31ST MARCH, 1980]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Crown Proceedings Act 1980*.

2. Commencement. This Act shall commence on a date appointed by Proclamation.

Abbreviations. Abbreviations used in reference to other Acts in notes appearing in and at the beginnings of sections have the following meanings:— Eng. Crown Proceedings Act, 1947 (United Kingdom); Vic. Crown Proceedings Act 1958 (Victoria); Qld. 29 Vic. No. 23 The Claims Against Government Act; 38 Vic. No. 13 Crown Remedies Act 1874-1976.

3. Arrangement. This Act is arranged as follows:—

PART I—PRELIMINARY, ss. 1-7;

PART II—PROCEEDINGS BY OR AGAINST THE CROWN, ss. 8-11;

PART III—RECOVERY BY THE CROWN OF CERTAIN DEBTS, ss. 12-18;

PART IV—GENERAL PROVISIONS, ss. 19-20;

SCHEDULE.

4. Repeals and savings. (1) The Act of New South Wales entitled *The Costs in Crown Suits Act of 1856* shall cease to apply in and for Queensland.

(2) (a) The Acts set forth in the schedule are repealed as and to the extent therein specified.

(b) The *District Courts Act 1967-1978* as amended by this Act may be cited as the *District Courts Act 1967-1979*.

(c) The *Subcontractors' Charges Act 1974-1976* as amended by this Act may be cited as the *Subcontractors' Charges Act 1974-1979*.

(d) The *District Courts' and Magistrates Courts' Jurisdiction Act 1976* as amended by this Act may be cited as the *District Courts' and Magistrates Courts' Jurisdiction Act 1976-1979*.

(3) Notwithstanding this section—

(a) a proceeding subsequent upon notification of the appointment of a nominal defendant pursuant to *The Claims against Government Act* that was published in the Gazette before the commencement of this Act may be instituted, continued and enforced;

(b) a proceeding instituted before the commencement of this Act pursuant to section 4 (2) of the *Subcontractors' Charges Act 1974-1976* against the permanent head of a department may be continued and enforced,

as if this Act had not been passed.

(4) The repeal of an Act or enactment set forth in the schedule shall not affect the application of that Act or enactment in relation to recognizances entered into or security given by persons or fines imposed before the commencement of this Act or the recognizances of sureties of those persons and all such proceedings may be taken upon and with respect to such recognizances and all amounts thereby provided to be paid by principals or sureties and all such fines may be recovered as if this Act had not been passed.

5. Application. This Act applies to all proceedings instituted after the commencement of this Act and in respect of any claim made in respect of or based upon a cause of action whether arising before or after the commencement of this Act.

6. Crown bound. (1) This Act binds the Crown.

(2) Save as provided in sections 8 and 19, this Act has effect notwithstanding anything in any Act or enactment or rule of law, practice or procedure.

7. Interpretation. In this Act unless the contrary intention appears—

“ appeal ” includes a rehearing or review;

“ court ” includes a tribunal;

“ Crown ” means the Crown in right of the State of Queensland and includes a corporation representing the Crown, constituted by or under any Act;

“ judgment ” includes any decree, order or award;

“ police force ” means the Queensland Police Force;

“ proceeding ” means any action, suit or proceeding of a civil nature;

“ proper officer ”, when used in relation to a court, means—

(a) in the case of the Supreme Court or a District Court, the registrar;

(b) in the case of a Magistrates Court, the clerk of the court;

“ Treasurer ” means the Treasurer of the State and includes a Minister of the Crown who is temporarily performing the duties of the Treasurer.

PART II—PROCEEDINGS BY OR AGAINST THE CROWN

8. Mode of proceeding. [Cf. Vic. s. 22]. (1) Subject to this Act and any other Act or law, a claim by or against the Crown may be made and enforced by a proceeding by or against the Crown under the title the “ State of Queensland ”.

(2) This section does not apply to a claim by or against a corporation representing the Crown, constituted by or under any Act.

9. Procedure. [Cf. Vic. s. 22; Qld. 29 Vic. No. 23, s. 5]. (1) A proceeding by or against the Crown—

(a) shall be instituted in the court that would have jurisdiction if the proceeding were between subject and subject;

(b) shall be instituted and proceeded with in accordance with the procedure of the court specifically applicable thereto or, if there is no such procedure, as nearly as possible in accordance with the procedure applicable to a proceeding between subject and subject.

(2) In a proceeding by or against the Crown—

(a) the rights of parties including rights of appeal shall as nearly as possible be the same; and

(b) judgment may be given and costs awarded, as in a proceeding between subject and subject.

10. Nature of relief. [Cf. Eng. s. 21; Qld. 29 Vic. No. 23 s. 7]. In a proceeding by or against the Crown, the court shall, subject to this Act, have power to give all such judgments as it has power to give in proceedings between subject and subject and otherwise to give such appropriate relief as a particular case requires.

11. Satisfaction of judgment. [Cf. Qld. 29 Vic. No. 23, s. 8]. (1) A judgment for or of money, damages or costs in a proceeding against the Crown shall be satisfied by the Treasurer by payment out of money—

- (a) in his hands for the time being, lawfully applicable thereto; or
- (b) that may be appropriated by Parliament for that purpose.

(2) Where a payment specified in subsection (1) is not duly made by the Treasurer, execution may be had and levied by distress and sale on any property vested in Her Majesty in right of the State of Queensland other than—

- (a) all property used, held, occupied or enjoyed or intended so to be by the Governor for the time being;
- (b) the Parliamentary buildings at Brisbane and all property therein or appertaining thereto or used or occupied therewith for the purposes of Parliament or of the Legislative Assembly;
- (c) Supreme Court houses and other court houses and offices appertaining thereto;
- (d) all prisons within the meaning of the *Prisons Act* 1958–1974 and all property therein or appertaining thereto or used or occupied therewith.

PART III—RECOVERY BY THE CROWN OF CERTAIN DEBTS

12. Procedure on recovery of certain fines. [Cf. Qld. 38 Vic. No. 13, s. 3; Vic. s. 4]. (1) Where a penalty by way of a fine is imposed upon a person otherwise than by a judgment or conviction of a court, a judge or the chairman of the court by which or the justice or one of the justices by whom the fine is imposed shall, if the fine is not paid immediately, furnish to the Attorney-General a certificate in the prescribed form, setting forth—

- (a) the fact that the fine has been imposed;
- (b) the full name and place of residence or business of the person on whom the fine has been imposed;
- (c) the reason for and the amount of the fine.

(2) Upon receipt of the certificate specified in subsection (1), the Attorney-General shall cause final judgment in the prescribed form to be entered in a court of competent jurisdiction for the amount of the fine and the costs of entering judgment.

A judgment entered pursuant to this subsection is for all purposes a judgment of the court in which it has been entered.

(3) An appeal does not lie in respect of a judgment entered pursuant to subsection (2).

13. Recovery of debts due by recognizance. [Cf. Qld. 38 Vic. No. 13, s. 4; Vic. s. 5]. (1) A court, judge or justice shall, upon the forfeiture of a recognizance made to Her Majesty, order—

(a) that the amount set forth in the recognizance be paid to the proper officer of the court by the person indebted, forthwith or within such time or by such instalments as the court, judge or justice allows;

(b) that in default of payment of the amount ordered to be paid—

(i) where the person indebted is the principal, he be imprisoned for such term not exceeding 2 years as the court, judge or justice imposes, specified in the order;

(ii) where the person indebted is a surety, the amount be levied by execution against his goods and chattels.

(2) An order made pursuant to subsection (1)—

(a) shall be in the prescribed form;

(b) shall be furnished to the proper officer of the court.

(3) Where an order is made pursuant to subsection (1) in the absence of a principal, the proper officer of the court shall send by post a notice in the prescribed form addressed to the principal and, where there is or are a surety or sureties to the recognizance (whether or not the order is made in the absence of the principal), to each such surety at the respective addresses shown in the recognizance setting forth—

(a) particulars of the order made against the principal and each surety; and

(b) a statement that a warrant of commitment or, as the case requires, warrant of execution will issue after the expiration of 28 days or such longer time as the court, judge or justice has allowed in the order unless—

(i) the amount specified in the order is sooner paid;

(ii) the person indebted has, before the expiration of the time specified in this paragraph (b), applied for and been granted an order for the payment by instalments of the amount specified in the order; or

(iii) an application is made in accordance with section 15.

(4) A warrant pursuant to this section—

(a) shall be in the prescribed form;

- (b) shall not issue upon an order made under subsection (1) in the absence of a principal until after the expiration of 28 days next following the date on which the order is made or such longer time as the court, judge or justice has allowed in the order.

14. Recovery of amount undertaken by surety. (1) A court, judge or justice shall, upon a declaration forfeiting an undertaking as to bail, order—

- (a) that the amount undertaken by the surety or sureties to be paid to Her Majesty upon the forfeiture of the undertaking be paid to the proper officer of the court forthwith or within such time or by such instalments as the court, judge or justice allows;
- (b) that in default of payment of that amount in accordance with the order the amount be levied by execution against the goods and chattels of the surety or sureties.

(2) An order made pursuant to subsection (1)—

- (a) shall be in the prescribed form;
- (b) shall be furnished to the proper officer of the court.

(3) Where an order is made pursuant to subsection (1) with respect to any surety or sureties, the proper officer of the court shall send by post a notice in the prescribed form addressed to each such surety at the address shown in the undertaking setting forth—

- (a) particulars of the order made against the surety; and
- (b) a statement that a warrant of execution will issue after the expiration of 28 days or such longer time as the court, judge or justice has allowed in the order unless—
- (i) the amount specified in the order is sooner paid;
- (ii) the person indebted has, before the expiration of the time specified in this paragraph (b), applied for and been granted an order for the payment by instalments of the amount specified in the order; or
- (iii) an application is made in accordance with section 15.
- (4) A warrant of execution pursuant to this section—
- (a) shall be in the prescribed form;
- (b) shall not issue upon an order made under subsection (1) until after the expiration of 28 days next following the date on which the order is made or such longer time as the court, judge or justice has allowed in the order.

15. Variation or rescission of order forfeiting recognizance or made against a surety to an undertaking as to bail. [Cf. Vic. s. 5 (3)]. (1) Where a recognizance has been forfeited or an order made against a surety to an undertaking as to bail, the principal or a surety to the recognizance or a surety to the undertaking, at any time within 28 days or such longer time as the court, judge or justice has allowed for payment of the debt after the date on which the order was made or, if the order was made in the absence of the principal, within 28 days after the order comes to the notice of the principal or surety, may make application—

- (a) where the order was made by the Supreme Court or a District Court, to a judge of the court that made the order;

- (b) where the order was made by a Magistrates Court, to a stipendiary magistrate,

for an order that the order forfeiting the recognizance or made against a surety to the undertaking be varied or rescinded on the ground that having regard to all the circumstances it would be against the interests of justice to require the person indebted to pay the amount ordered to be paid.

(2) The judge or stipendiary magistrate shall hear and determine the application and—

- (a) may vary the order in such manner as he thinks fit;
- (b) may rescind the order;
- (c) may refuse the application and confirm the order.

Where an order is rescinded pursuant to this section, the judge or magistrate may cancel any warrant of execution issued under that order.

(3) An application pursuant to subsection (1)—

- (a) shall be in the prescribed form;
- (b) shall be signed by the person making it;
- (c) shall set forth briefly and concisely the grounds on which it is made, including particulars of the circumstances relied upon;
- (d) shall be lodged with the proper officer of the court;
- (e) shall be served on the complainant or, where the recognizance or undertaking was entered into following presentment of an indictment, on the Crown Solicitor at least 14 days before the date fixed for the hearing thereof.

Notwithstanding paragraph (e), the application may, with the consent of the parties thereto, be heard on a date earlier than a date at least 14 days after service of the application.

For the purposes of the application of paragraph (e), where an indictment is presented on a charge for an offence against the laws of the Commonwealth, Crown Solicitor includes a Deputy Commonwealth Crown Solicitor in Queensland.

(4) A judge of the appropriate court or, as the case requires, stipendiary magistrate may, upon the application of the applicant made at any time after the lodging of an application pursuant to subsection (1) and before the date of hearing, grant a stay of proceedings in the application and may direct the return of any unexecuted warrant or postpone the issue or stay the execution of any warrant pending the determination of the application.

16. Execution of warrant. [Cf. Vic. s. 5 (10)]. A member of the police force to whom a warrant under this Part is directed shall execute the warrant according to its tenor unless the amount of money specified in the warrant is sooner paid.

17. Duty of keeper of prison. [Cf. Vic. s. 5 (10), s. 5 (12)]. (1) A keeper of a prison shall receive into his custody a person referred to in a warrant of commitment and safely keep him for the term specified in the warrant unless the amount of money specified in the warrant is sooner paid or that person is otherwise removed or discharged from custody by due process of law.

(2) A keeper of a prison shall forthwith remit any amount of money received by him in payment of money due and payable under a forfeited recognizance to the proper officer of the court who issued the warrant.

18. Application of Justices Act. [Cf. Vic. s. 5 (11)]. Subject to this section, the provisions of the *Justices Act* 1886–1979 with respect to warrants and to the payment of money shall, with all necessary adaptations and so far as those provisions are applicable, apply and extend with respect to the recovery of moneys payable under forfeited recognizances and undertakings as to bail.

A reference in those provisions—

- (a) to a warrant, shall be read and construed as a reference to a warrant issued for the purposes of this Part;
- (b) to a fine, other penalty or sum adjudged to be paid under a conviction or order of a Magistrates Court or justice, shall be read and construed as a reference to an order made for the recovery of money payable under a forfeited recognizance or undertaking as to bail;
- (c) to a Magistrates Court or justice, shall be read and construed as a reference to the court, judge or justice making an order forfeiting a recognizance or an undertaking as to bail; and
- (d) to a clerk of the court, shall be read and construed as a reference to the proper officer of the court.

PART IV—GENERAL PROVISIONS

19. Service of documents. (1) Subject to any other Act or law or any practice, a document or other writing required to be served on the Crown for the purposes of or in connexion with a proceeding by or against the Crown shall be served on the Crown Solicitor and service of a document or other writing in accordance with this subsection shall be duly effected if it is left at the office of the Crown Solicitor with some responsible person.

(2) Save as prescribed by subsection (1), a notice, order or other writing authorized or required by this Act to be given to or served on any person shall be duly given or served if—

- (a) it is served personally on the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

20. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters required or permitted by this Act to be prescribed and all matters that in the opinion of the Governor in Council are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

The power to regulate conferred by this section includes the power to prohibit.

SCHEDULE		[s. 4 (2)]
Year and Number of Act	Short Title	Extent of Repeal
29 Vic. No. 23 ..	<i>The Claims against Government Act</i>	The whole
38 Vic. No. 13 ..	<i>The Crown Remedies Act of 1874</i>	The whole
21 Geo. V. No. 5	<i>The Crown Remedies Act Amendment Act of 1930</i>	The whole
5 Eliz. II. No. 21	<i>The Crown Remedies Acts Amendment Act of 1956</i>	The whole
1967 No. 42 ..	<i>The District Courts Act of 1967 as amended</i>	section 70
1974 No. 37 ..	<i>Subcontractors' Charges Act 1974 as amended by the Subcontractors' Charges Act Amendment Act 1976 (1976 No. 38)</i>	section 4 (2)
1976 No. 19 ..	<i>District Courts' and Magistrates Courts' Jurisdiction Act 1976</i>	(a) in section 3, the expression "PART IV— AMENDMENT OF THE CROWN REMEDIES ACTS, 1874 TO 1956;" (b) PART IV (comprising sections 19 and 20 and the heading immediately preceding section 19)