

WESTERN AUSTRALIA.

CROWN SUITS.

11° Geo. VI., No. XI.

No. 11 of 1947.

[As amended by Act No. 22 of 1954, assented to 7th October, 1954; and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to Repeal the Crown Suits Act, 1898, and to make Better Provision for Suits by and against the Crown and for other purposes relative thereto and to the Constitutional Powers of the Crown.

[Assented to 1st November, 1947.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Crown Suits Act, 1947-1954*.

Short title.
Amended by
No. 22 of
1954, s. 1.

2. The Crown Suits Act, 1898 (62° Victoriae No. 9), is hereby repealed.

Repeal of
Act of 1898.

Interpre-
tation of
"Crown."

3. In this Act, the term "Crown" means the Crown in right of the Government of Western Australia.

Application
of this Act.

4. This Act shall apply to any cause of action which accrues after the commencement of this Act.

Crown to
sue and be
sued as
subject.

5. (1) Subject to this Act, the Crown may sue and be sued in any Court or otherwise competent jurisdiction in the same manner as a subject.

Proceedings
to be under
title "the
State of
Western
Australia."

(2) Every proceeding shall be taken by or against the Crown under the title "the State of Western Australia."

Limitation
of time
for giving
notice.
Repeated
and
re-enacted
by No. 22 of
1954, s. 2.

6. (1) Subject to the provisions of subsections (2) and (3) of this section, no right of action lies against the Crown unless—

- (a) the party proposing to take action gives to the Crown Solicitor, as soon as practicable or within three months (whichever of such periods is the longer), after the cause of action accrues, notice in writing giving reasonable information of the circumstances upon which the proposed action will be based and the name and address of the party and his solicitor or agent; and
- (b) the action is commenced before the expiration of one year from the date on which the cause of action accrued,

and for the purposes of this section where the act, neglect, or default on which the proposed action is based is a continuing one, no cause of action in respect of the act, neglect or default accrues until the act, neglect or default has ceased but the notice required by paragraph (a) of this subsection may be given and an action may thereafter be brought while the act, neglect or default continues.

(2) The Attorney General may on behalf of the Crown consent in writing to the bringing of an action against the Crown at any time before the expiration of six years from the date on which the cause of action accrued whether or not the notice as required by subsection (1) of this section has been given.

(3) (a) Notwithstanding the foregoing provisions of this section application may be made to the Court having jurisdiction to hear the action when the application is granted for leave to bring an action at any time before the expiration of six years from the date on which the cause of action accrued, whether or not notice as required by subsection (1) of this section has been given to the Crown.

(b) Where the Court considers that the failure to give the notice or the delay in bringing the action as the case may be, was occasioned by mistake or by any other reasonable cause or that the Crown is not materially prejudiced in its defence or otherwise by the failure or delay, it may if it is just to do so, grant leave accordingly subject to such conditions as it thinks it is just to impose.

(c) Before an application is made under the provisions of paragraph (a) of this subsection the party intending to make the application shall give notice in writing of the proposed application and the grounds on which it is to be made to the Crown Solicitor, at least fourteen days before the application is made.

7. Nothing in this Act shall affect—

(a) the rights or liabilities of any corporate body or instrumentality of the Crown created by any Act of Parliament.

(b) any right of action which is conferred on the subject by any Act of Parliament against any corporate body or instrumentality of the Crown or any official or person nominated as a defendant on behalf of the Crown;

Statutory
rights
preserved
where
already
given.

Right of Attorney General to sue and be sued preserved.

- (c) any right or liability by law or custom established of Her Majesty's Attorney General to sue or be sued on behalf of the Crown.

Joinder of the Crown in proceedings between subject and subject.

8. (1) When in any action, cause or proceeding between litigants in any civil Court in Western Australia in which the Crown is not a party it appears to the Court that the constitutional rights of the Crown may be directly or indirectly affected, or any question arises as to the constitutional validity of any Act of Parliament of the State, the Crown may obtain leave by its Attorney General to intervene, or the Court may order that the Crown be joined as a party.

Removal of proceedings from inferior court to Supreme Court.

(2) Where any such question arises in any civil Court, except the Supreme Court, the Supreme Court or a judge thereof may, on the application of a party or of the Attorney General, remove the proceedings into the Supreme Court for trial and determination.

Court to settle terms and conditions of joinder or removal.

(3) Every such intervention or joinder or removal shall be on such terms and conditions as the Court shall deem just.

Interpretation of "Act of Parliament."

(4) In this section "Act of Parliament" includes an ordinance passed before the grant of responsible government to the State.

Same process available to Crown and subject.

9. Subject to this Act, the same process shall be available both to the Crown and to the subject for the determination and enforcement of claims in Her Majesty's civil Courts.

Method of recovering judgment against the Crown.

10. (1) No execution or other process in the nature of execution shall be issued out of any Court against the Crown, but after any judgment has been given against the Crown the Registrar of the

Supreme Court shall give to the party in whose favour the judgment is given a certificate of such judgment in the prescribed form and sealed with the seal of the Supreme Court.

(2) On the receipt of such certificate the Governor shall cause to be paid out of the Consolidated Revenue Fund the amount of such judgment and costs to the person entitled to recover the same.

11. The writ of extent and the writ of *capias ad satisfaciendum* shall no longer be available at the instance of the Crown for the recovery of debts and judgments and the same are hereby abolished.

Writs of
Extent and
Ca. Sa.
abolished.

12. The Judges of the Supreme Court or any two of them may make rules governing practice or procedure which in their opinion requires to be specially prescribed for the purpose hereof, and subject thereto the Rules of the Supreme Court or of any competent Court in which an action is brought by or against the Crown shall apply as far as applicable to the practice and procedure to be observed in such action.

Rules of
Court.

