



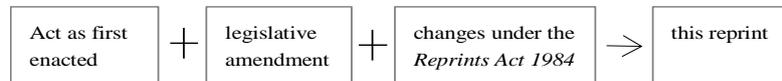
Western Australia

# **Crown Suits Act 1947**

**Reprint 2: The Act as at 9 May 2003**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

**Reprinted under the  
Reprints Act 1984 as  
at 9 May 2003**

Western Australia

## **Crown Suits Act 1947**

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## Crown Suits Act 1947

**An Act to repeal the *Crown Suits Act 1898*<sup>2</sup>, 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.**

**1. Short title**

This Act may be cited as the *Crown Suits Act 1947*<sup>1</sup>.

[2. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

**3. Interpretation of “Crown”**

In this Act, the term “**Crown**” means the Crown in right of the Government of Western Australia.

**4. Application of this Act**

This Act shall apply to any cause of action which accrues after the commencement of this Act<sup>1</sup>.

**5. Crown to sue and be sued as subject**

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

**6. Limitation of time for giving notice**

- (1) Subject to the provisions of subsections (2) and (3), 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 3 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) 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 6 years from the date on which the cause of action accrued whether or not the notice as required by subsection (1) 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 6 years from the date on which the cause of action accrued, whether or not notice as required by subsection (1) 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) 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 14 days before the application is made.

- (4) Where an action is one to which this section applies and —
  - (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and
  - (b) the person who suffered the latent injury had the knowledge referred to in section 38A of the *Limitation Act 1935* before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time of the coming into operation of the amending Act.

- (5) Where in an action to which subsection (4) applies it is proved that —
  - (a) the person who suffered the latent injury had the knowledge referred to in section 38A of the *Limitation Act 1935* before 1 January 1984; and
  - (b) the period of 6 years applicable under subsection (3)(a) as in force before the coming into operation of the amending Act had expired before the action was commenced,

damages shall not be awarded except in respect of pecuniary loss and the total amount of the damages awarded shall not in any case exceed \$120 000.

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- (6) Where an action is one to which this section applies and —
- (a) the cause of action arises from a person having suffered a latent injury that is attributable to the inhalation of asbestos; and
  - (b) the person who suffered the latent injury did not have the knowledge referred to in section 38A of the *Limitation Act 1935* before 1 January 1984,

the period limited by this section for the doing of any thing in relation to that action shall run not from the time otherwise provided by this section but from the time when that person has the knowledge referred to in section 38A of the *Limitation Act 1935*.

- (7) After the coming into operation of the amending Act —
- (a) a notice may be given;
  - (b) an action may be commenced; or
  - (c) consent may be given, or leave may be granted, to bring an action,

in accordance with subsection (4) or (6) notwithstanding that the period of limitation applicable before the coming into operation of the amending Act in respect thereof had expired before the coming into operation of that Act.

- (8) In subsections (4), (5), (6), and (7) —
- “latent injury”** has the same meaning as is given to that expression by section 38A of the *Limitation Act 1935*;
- “the amending Act”** means the *Acts Amendment (Asbestos and Related Diseases) Act 1983*<sup>1</sup>.

[Section 6 inserted by No. 22 of 1954 s. 2; amended by No. 84 of 1983 s. 7.]

**7. Statutory rights preserved where already given**

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;
- (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.

**8. Joinder of the Crown in proceedings between subject and subject**

- (1) When in any action, use 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.
- (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.
- (3) Every such intervention or joinder or removal shall be on such terms and conditions as the Court shall deem just.
- (4) In this section "**Act of Parliament**" includes an ordinance passed before the grant of responsible government to the State.

**9. Same process available to Crown and subject**

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.

**10. Method of recovering judgment against the Crown**

- (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 charged to the Consolidated Fund the amount of such judgment and costs to the person entitled to recover the same.

*[Section 10 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]*

**11. Writs of extent and Ca. Sa. abolished**

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.

**12. Rules of Court**

The Judges of the Supreme Court or any 2 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.



**Notes**

<sup>1</sup> This reprint is a compilation as at 9 May 2003 of the *Crown Suits Act 1947* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Crown Suits Act 1947</i>	11 of 1947	1 Nov 1947	1 Nov 1947
<i>Crown Suits Act Amendment Act 1954</i>	22 of 1954	7 Oct 1954	7 Oct 1954
<b>Reprint of the <i>Crown Suits Act 1947</i> approved 14 Apr 1971</b> (includes amendments listed above)			
<i>Acts Amendment (Asbestos Related Diseases) Act 1983 Pt. III</i>	84 of 1983	22 Dec 1983	19 Jan 1984 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<b>Reprint 2: The <i>Crown Suits Act 1947</i> as at 9 May 2003</b> (includes amendments listed above)			

<sup>2</sup> The provision in this Act repealing that Act has been omitted under s. 7(4)(f) of the *Reprints Act 1984* from this reprint.