

Queensland



CROWN PROCEEDINGS ACT 1980

**Reprinted as in force on 15 December 1995
(includes amendments up to Act No. 58 of 1995)**

Reprint No. 2

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 15 December 1995. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 37).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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CROWN PROCEEDINGS ACT 1980

[as amended by all amendments that commenced on or before 24 November 1995]

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

PART 1—PRELIMINARY

Short title

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

Application

5. 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.

Crown bound

6.(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.

Interpretation

7. In this Act—

“**appeal**” includes a rehearing or review.

“**approved form**” see section 20.¹

“**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 service**” means the Queensland Police Service.

“**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.

PART 2—PROCEEDINGS BY OR AGAINST THE CROWN

Mode of proceeding

8.(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.

Procedure

9.(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;

¹ Section 20 (Approval of forms)

- (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.

Nature of relief

10. In a proceeding by or against the Crown, the court shall, subject to this Act, have power to give all such judgment as it has power to give in proceedings between subject and subject and otherwise to give such appropriate relief as a particular case requires.

Satisfaction of judgment

11.(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 the Treasurer's 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 *Corrective Services Act 1988* and all property therein or appertaining thereto or used or occupied therewith.

PART 3—RECOVERY BY THE CROWN OF CERTAIN DEBTS

Procedure on recovery of certain fines

12.(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 chairperson of the court by which or the justice or 1 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 approved 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 approved form to be entered in a court of competent jurisdiction for the amount of the fine and the costs of entering judgment.

(2A) A judgment entered pursuant to subsection (2) 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).

Recovery of debts due by recognisance

13.(1) A court, judge or justice shall, upon the forfeiture of a recognisance made to Her Majesty, order—

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- (a) that the amount set forth in the recognisance 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, the person 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 the person's goods and chattels.

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

- (a) shall be in the approved 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 approved form addressed to the principal and, where there is or are a surety or sureties to the recognisance (whether or not the order is made in the absence of the principal), to each such surety at the respective addresses shown in the recognisance 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; or
 - (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 approved 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.

Recovery of amount undertaken by surety

14.(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 approved 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 approved 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; or
 - (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 approved 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.

Variation or rescission of order forfeiting recognisance or made against a surety to an undertaking as to bail

15.(1) Where a recognisance has been forfeited or an order made against a surety to an undertaking as to bail, the principal or a surety to the recognisance 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 recognisance 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 or she thinks fit;
- (b) may rescind the order;
- (c) may refuse the application and confirm the order.

(2A) 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 approved 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 recognisance 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.

(3A) Notwithstanding subsection (3)(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.

(3B) For the purposes of the application of subsection (3)(e), where an indictment is presented on a charge for an offence against the laws of the Commonwealth, crown solicitor includes the Australian Government 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.

Execution of warrant

16. A police officer 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.

Duty of keeper of prison

17.(1) A keeper of a prison shall receive into his or her custody a person referred to in a warrant of commitment and safely keep the person 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 or her in payment of money due and payable under a

forfeited recognisance to the proper officer of the court who issued the warrant.

Application of Justices Act

18.(1) Subject to this section, the provisions of the *Justices Act 1886* 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 recognisances and undertakings as to bail.

(2) 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; and
- (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 recognisance or undertaking as to bail; and
- (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 recognisance 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 4—GENERAL PROVISIONS

Service of documents

19.(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 connection 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 authorised 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.

Approval of forms

20.(1) The chief executive may approve forms for—

- (a) anything for which this Act requires or permits an approved form to be used; or
- (b) another use under this Act.

(2) Subsection (1)(b) does not apply to forms for court proceedings.

Regulation making power

21. The Governor in Council may make regulations under this Act.

References to repealed Act

22. A reference in an Act or document to the *Crown Remedies Act 1874* is taken to be a reference to this Act.

Transitional provisions about approved forms

23.(1) This section applies if—

- (a) immediately before its commencement, there was a prescribed form for a matter; and
- (b) on the commencement, there is to be an approved form for the matter or a form may be approved for the matter.

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(2) Until there is an approved form for the matter, the form that was the prescribed form for the matter immediately before the commencement is taken to be the approved form for the matter.

(3) This section expires 6 months after it commences.

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 15 December 1995. Future amendments of the Crown Proceedings Act 1980 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Reprint date
1	to Act No. 87 of 1994	27 January 1995

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

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Changed citations and remade laws	1
Changed names and titles	1
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Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Crown Proceedings Act 1980 No. 2

date of assent 31 March 1980

commenced 1 July 1980 (proc pubd gaz 28 June 1980 p 1634)

as amended by—

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 2

date of assent 1 December 1994

commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

7 List of annotations

Commencement

s 2 om R2 (see RA s 37)

Arrangement

s 3 om R1 (see RA s 36)

Repeals and savings

s 4 om R1 (see RA ss 38, 40)

Interpretation

- s 7 def “**Treasurer**” om R1 (see RA s 39)
def “**approved form**” ins 1995 No. 58 s 4 sch 1

Procedure on recovery of certain fines

- s 12 amd 1995 No. 58 s 4 sch 1

Recovery of debts due by recognisance

- s 13 amd 1995 No. 58 s 4 sch 1

Recovery of amount undertaken by surety

- s 14 amd 1995 No. 58 s 4 sch 1

Variation or rescission of order forfeiting recognisance or made against a surety to an undertaking as to bail

- s 15 amd 1995 No. 58 s 4 sch 1

Approval of forms

- s 20 amd R1 (see RA s 39)
sub 1995 No. 58 s 4 sch 1

Regulation making power

- s 21 prev s 21 renum as s 22 1995 No. 58 s 4 sch 1
pres s 21 ins 1995 No. 58 s 4 sch 1

References to repealed Act

- s 22 pres s 22 (prev s 21) ins 1994 No. 87 s 3 sch 2
pres renum 1995 No. 58 s 4 sch 1

Transitional provision about approved forms

- s 23 ins 1995 No. 58 s 4 sch 1
exp 28 May 1996 (see s 23(3))

SCHEDULE

- om R1 (see RA s 40)