

QUEENSLAND

LAW REFORM COMMISSION

CONFIDENTIAL

WORKING PAPER ON AN EXAMINATION OF THE LAW
RELATING TO ACTIONS AGAINST THE CROWN AND
THE REPLACEMENT OF THE CLAIMS AGAINST
GOVERNMENT ACT OF 1866

Enquiries to: The Secretary,
Law Reform Commission,
Comalco House,
50 Ann Street,
BRISBANE.

(P.O. Box 312,
NORTH QUAY.)

Telephone: 224 7622

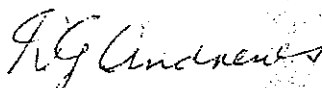
LAW REFORM COMMISSION

WORKING PAPER ON AN EXAMINATION OF THE LAW
RELATING TO ACTIONS AGAINST THE CROWN AND
THE REPLACEMENT OF THE CLAIMS AGAINST
GOVERNMENT ACT OF 1866

The former Minister for Justice and Attorney-General had requested the Law Reform Commission to examine the procedure for appointing a Nominal Defendant in actions against the Crown and to replace the Claims Against Government Act of 1866 with a more modern Statute. It was also his suggestion that the replacement Statute provide for actions by the Crown and to deal with such matters as costs in Crown proceedings, recovery of estreated recognizances, as well as any other changes which the passing of years had rendered necessary or desirable. To this end the Commission has prepared a working paper containing a draft Bill and Commentary. The views expressed therein are not necessarily the final views of the Commission.

The working paper is being circulated to persons and bodies known to be interested, from whom comment and criticism are invited. It is circulated on a confidential basis and recipients are reminded that any recommendations for the reform of the law must have the approval of the Governor in Council before being laid before Parliament. No inferences should be drawn as to any Government Policy.

It is requested that any observations you may desire to make be forwarded to the Secretary, Law Reform Commission, P.O. Box 312, North Quay, Queensland, 4000, so as to be received no later than Friday, 2nd September, 1977.


(D.G. Andrews)
CHAIRMAN.

Dated at Brisbane, 6th July, 1977

CROWN PROCEEDINGS ACT

Commentary on Draft Bill

INTRODUCTION

In the constitutional context of the Australia States, the expression "the Crown" is used as a synonym for "the Government" (cf. Hogg: Liability of the Crown, pp. 9-10; Ryder v. Foley (1906) 4 C.L.R. 422). Although the Crown is regarded as a corporation: see Re Mason [1928] 1 Ch. 385, 398, at common law there were several obstacles to proceedings by a citizen in order to obtain legal redress against the Crown. One was the rule that the King could not be impleaded in his own courts. This difficulty was to some extent overcome by the procedure by way of petition of right, which, however, was not available where the wrong complained of was the commission of a tort. In the field of tortious liability, the maxim applied was the "the King can do no wrong", in consequence of which it was held that the Crown could neither commit nor authorise the commission of a tort. A further possible obstacle to redress was the decision in Sloman v. Government of New Zealand (1876) 1 C.P.D. 563, to the effect that a colonial government was not a corporation and could not effectively be served with process. The decision in Sloman's case, although criticized by Professor F.W. Maitland, never seems to have been overruled, although in Australia it has probably been displaced by the provisions of the Commonwealth Constitution, which clearly enough conceive of the States as entities capable of suing and of being sued: see particularly s.75(iv) of the Constitution; and cf. Commonwealth v. Rhind (1966) 119 C.L.R. 584.

Had the foregoing state of affairs prevailed it would have been intolerable in a society in which, in and after the nineteenth century, the government has become increasingly involved in trading and in a host of other activities which bring it into frequent contact with individual citizens to whom a wrong may be done. Fortunately, at an early date each of the then colonies of Australia and New Zealand enacted legislation enabling claims to be made and enforced at law and in equity against the "Government" of the colony, or, in other words, the Crown. This legislation provided and provides for a petition to the Governor praying for the appointment of a nominal defendant, against whom proceedings may be brought and providing for satisfaction of judgments out of Government moneys. The effect has been to overcome or, perhaps more accurately, to circumvent both the rule that the King could not be impleaded in his own courts and the rule that a colonial government was not an entity capable of being sued. Any remaining difficulty arising from the common law immunity of the Crown in respect of tortious wrongs disappeared when in Farnell v. Bowman (1887) 12 App.Cas.

643 the Privy Council held that the colonial legislation rendered the Government of a colony liable to be sued in an action of tort.

In Queensland the legislation enabling claims to be instituted and enforced against the Crown is the Claims against Government Act of 1866 (29 Vic. No. 23). Section 2 of the Act provides for a petition by any person "having or deeming himself to have any just claim or demand against the Government" praying for the appointment of a nominal defendant. The same section provides for appointment of a nominal defendant by notification in the Government Gazette. Although the word used in s.2 is "may" and so appears to import a discretion, the proviso to the section automatically makes the Treasurer the nominal defendant if no such notification is made by the Governor within one month after presentation of the petition.

In practice the procedure provided by the Act of 1866 has operated satisfactorily, but it is subject to a few defects. One is that the process of petition, appointment of a nominal defendant, and gazettal appears to be a quite unnecessary, wasteful and expensive step. Another is that the appointed nominal defendant may die before determination of the action, in which event a further appointment becomes necessary. Another disadvantage is that, particularly in cases where urgent relief such as an injunction is sought, it is not practicable or possible to follow the statutory procedure for appointing a nominal defendant because of the delay involved. In such cases, it has been held proper for the proceedings to be brought against the Attorney-General as representing the State : see Australian Alliance Assurance Co. Ltd. v. Attorney-General for Queensland [1916] St.R.Qd. 135; but, if this is so, then there seems to be little compelling need for retaining the present system of appointment of nominal defendants for the purpose of proceedings against the Crown.

The Bar Association of Queensland has recommended in a memorandum dated 9th June, 1976 that the Act of 1866 be repealed and new legislation enacted providing for proceedings against the Crown to be brought against it under the name of the State of Queensland, without the necessity for appointment of a nominal defendant. This recommendation has been considered and is concurred in by the Solicitor General, who has approved a memorandum dated 7th June, 1976 prepared on this subject by one of his legal officers Mr. K.M. O'Shea. The former Minister for Justice and Attorney-General (Hon. W.E. Knox) has in his memorandum dated 23rd July, 1976 also approved the proposal for abolition of the procedure of appointment of a nominal defendant, and its replacement by a procedure for bringing actions simply against the State of Queensland, together with the repeal of the Act of 1866 and the substitution of a statute in more modern form.

In addition to the proposal for modernising the procedure for suing the Crown, the foregoing memorandum also recommends the enactment of new legislation simplifying the procedure for enforcement of claims by the Crown and the recovery of moneys in the form of forfeited recognizances, etc., due to the Crown. The existing procedure is hedged about by many archaisms which were only partly eliminated by the early New South Wales enactment entitled the Costs in Crown Suits Act 1856 (20 Vic. No. 3) and The Crown Remedies Act, 1874 - 1976 (38 Vic. No. 13). Part III of the Bill, which has drawn to a considerable extent upon the provisions of Part I of the Victorian Crown Proceedings Act 1958 (No. 6237), is designed to improve the present state of Queensland law in this regard.

PART I - PRELIMINARY

Short title and commencement

1. The existing Act of 1866 is entitled "Claims against Government Act". Because the proposed new Act will be concerned with suits by as well as against the Crown, the old title is inappropriate. We consider that the title "Crown Proceedings Act" is preferable. It is the title used in the comparable legislation of Victoria, Western Australia and the United Kingdom.

2. Division of Act.

3. Repeals and savings. The three existing statutes - Claims against Government Act, 1866, Crown Remedies Act, 1874 - 1976, and the Costs in Crown Suits Act, 1856, will be repealed, or, in the case of the latter (New South Wales) statute, will cease to apply.

The effect of Clauses 3(3) and 3(4) will be to apply the provisions of the new Act to proceedings instituted after the new Act commences, irrespective of when the cause of action arose, but the Act of 1866 will continue to apply to actions in respect of which notification of appointment of a nominal defendant has been gazetted prior to the commencement of the new Act.

4. Application. The effect of the decision of the Full Court in Sundell v. Queensland Housing Commission (No. 5) [1955] St. R. Qd. 162, and of the High Court in Commonwealth v. Rhind (1966) 119 C.L.R. 584, appears to be that a corporation which represents the Crown enjoys all the privileges and immunities of the Crown : see the discussion of this point in this Commentary under "any proceedings" in relation to cl. 7 of the Bill. The Act of 1866 did not apply to proceedings against Crown corporations (which were probably comparatively rare phenomena in 1866). Hence, it seems clearly enough to follow that, in litigation by or against a Crown corporation which is invested with the privileges of the Crown, that corporation would be entitled to the very privileges, from discovery, etc., which it is a principal object of the 1866 Act to remove in any other proceedings against the Crown. The point appears never to have arisen directly in any reported case although the two decisions mentioned plainly imply the foregoing conclusion.

It is quite anomalous that a Crown corporation should enjoy a privilege which is now by statute denied to the Crown itself. Hence cl.4(2) is intended to ensure that the procedural provisions of cl.1.7, 8 and 9 of the Bill will apply to Crown corporations and so place them on the same footing as the Crown and all other litigants.

5. Interpretation. This comprises definitions including a definition

of the term "Crown corporation".

PART II - CIVIL PROCEEDINGS BY AND
AGAINST THE CROWN

6. Proceedings by and against the Crown. The proposed clauses 6 and 7 follow in substance the wording of s.5 of the Act of 1866. The following differences should however be observed :-

"Subject to the provisions of any other Act". These words have been introduced to preserve cases in which by some specific statutory provision a peculiar form of procedure is prescribed (e.g. appeals against an assessment of stamp duty, which are provided for in s.24 of the Stamp Act 1894 - 1976). They will also serve to ensure that claims against statutory corporations which represent the Crown and are able to sue and be sued are brought by or against the statutory corporation in its own name and not by or against the Crown as such.

"proceedings" in both cl. 6 and 7 is confined to proceedings of a civil nature.

"Crown". The word "Crown" is used throughout the Act in place of the word "Government" which appeared in the 1866 Act. There are two reasons for this. One is that the word "Government" is, as we have seen, synonymous with "Crown" so far as the Government of Queensland (and other Australian States) is concerned, and was no doubt used in the Act of 1866 only because it was then thought somewhat impudent for a colony of Her Majesty to permit actions against the Crown eo nomine. Such a consideration no longer has the same force in the latter part of the twentieth century and in the prevailing constitutional context.

The second reason is that the Bill proposes the repeal of The Crown Remedies Act 1874 - 1976, and The Costs in Crown Suits Act of 1856, which in substance placed the Crown as plaintiff in the same position as a private citizen for purposes of all litigation. Of these statutes (which will be replaced by the provisions of the proposed new Act) the former requires proceedings to be brought in the name of "The Queen" (s.17), whilst the latter refers to "the Crown". It is preferable that the Crown be uniformly so described throughout the legislation irrespective of whether it is suing as plaintiff or defendant.

The modern legislation of Victoria, Western Australia and New Zealand also uses the term "Crown" in place of "Government".

"by the Crown". Clause 6 will permit of proceedings by the Crown under the name "State of Queensland". Such proceedings are at present possible under the Crown Remedies Act, which however provides in s.6

that debts due to the Crown may be recovered by proceedings commenced by writ of capias ad respondendum (ca.re.) issued out of the Supreme Court. This writ, as Mr. O'Shea points out in the memorandum already referred to, is archaic and has as one of its undesirable features the possible arrest of the debtor, a course which is otherwise very seldom possible in purely civil proceedings. The Crown Remedies Act was amended in 1930 by the insertion of s.2A to permit an action to be brought by the Crown in the Magistrates Court in the ordinary way, and there is a similar provision in s.70 of the District Courts Act. The reform proposed by cl. 6 will produce uniformity of proceedings by the Crown in the Supreme Court and in the other two courts. In view of the provisions of cl. 7 and of decisions such as that in Commonwealth v. Anderson (1961) 105 C.L.R. 303, we see no need to retain special provisions, such as that in s.13 of the Crown Remedies Act, expressly enabling the Crown to bring proceedings for recovery of land by ordinary action rather than by writ of intrusion or by information.

It should be noted that the provisions of s.5 of the Act of 1866 have in the Bill been separated into two provisions (cll. 3 and 4) for reasons which appear below.

7. Procedure. Section 5 of the Act of 1866 provides that a petitioner may sue a nominal defendant "at law or in equity in any competent court" and that "the proceedings and rights of parties therein shall as nearly as possible be the same and judgment and costs shall follow on either side as in an ordinary case between subject and subject at law or in equity." The reference to "law or equity" appears in the section only for the sake of completeness, and has been held not to exclude actions in Admiralty : South Coast Road Metal Quarries v. Whitfield (1914) 14 S.R. (N.S.W.) 300. With the passing of the Judicature Act of 1876, it has become redundant and the reference thereto has consequently been omitted from cl. 7. Section 5 of the 1866 Act (or its equivalent elsewhere) has been held to place the Crown on a footing of substantial equality with the subject in matters of procedure in litigation, e.g. as to discovery : Jamieson v. Downie [1923] A.C. 691; interrogatories : Fisher v. Tully (1873) 3 Q.S.C.R. 194 (the headnote to the report of this case may be rather too widely expressed); and costs : see Affleck v. The King (1906) 3 C.L.R. 608, 630-631.

The Victorian Crown Proceedings Act in ss. 22 and 23 uses a slightly different formula for expressing the principle that proceedings by and against the Crown should be regulated by the procedure governing suits between subject and subject. In so far as this concerns the court in which proceedings are to be commenced, we have adopted the Victorian provision in cl. 7(a), but otherwise we prefer to retain in cl. 7(b) the general form of the original s.5 of the 1866 Act, the meaning of which has been well settled by judicial decisions over the period of a century or more since it was passed. The following

observations may, however, be made on cl.7:-

"court". The word court is defined in cl.5 so as to include "tribunal" and so cover proceedings not in a court strictly so called, e.g. arbitration proceedings.

"any proceedings". Difficulties sometimes arise from the express provisions of statutes establishing and incorporating particular bodies for specific Governmental purposes. For example, s.9(2) of the State Housing Act, 1945 - 1974, declares the State Housing Commission to represent the Crown and to be a corporation capable of suing and being sued; but in s.9(4) provides that it shall have all the privileges of the Crown. In Sundell v. Queensland Housing Commission (No.5) [1955] St.R.Qd.162, the Full Court held that the Commission enjoyed as one of these privileges the immunity of the Crown from seizure of its property in execution. Taken to its logical conclusion this means that the Crown's privilege from making discovery or paying costs is also available to such a corporation, and such a conclusion is consistent with the approach adopted by Barwick C.J. in Commonwealth v. Rhind (1966) 119 C.L.R. 584, 600, in the case of a Commonwealth Crown corporation. As mentioned earlier, what is anomalous about this state of affairs is that the Crown as such does not enjoy such immunity in proceedings under the Act of 1866, but proceedings against a statutory corporation are not brought against the Crown under that Act, but against the corporation established by the relevant Act which constitutes it. Even if the decision in Sundell's case cannot be taken to re-invest the Crown with all the foregoing privileges, it is obviously desirable to place the matter beyond doubt, particularly because there are so many Crown corporations which by statute are given the same form of privilege, e.g. the Commissioner for Railways : see Railways Act 1914 - 1972, s.8(1). It is for this reason that we have thought it necessary in effect to subdivide s.5 of the Act of 1866 into separate clauses 6 and 7, introducing the latter with the words "In any proceedings by or against the Crown . . .", and in cl.4(2) to express the sections as applying notwithstanding the provisions of any other Act. Otherwise the provisions of cl.7 would apply only to proceedings against the Crown under the proposed legislation and not to proceedings against a special statutory corporation which under the statute incorporating it is declared to represent the Crown and enjoy its privileges.

"rights of appeal" Section 25 of the Victorian Crown Proceedings Act specifically places rights of appeal on the same footing as other rights of parties in Crown proceedings. We consider this a useful addition and have consequently included in cl.7(b) an express reference to "rights of appeal", "appeal" being itself defined in cl.5 of the Bill.

8. Nature of relief. Clause 8 follows in substance the existing provisions of s.7 of the 1866 Act. There was at one time a doubt whether an injunction might be granted against the Crown, but this doubt must, as regards Queensland, be regarded as having been set at rest by the decision of the Full Court in Australian Alliance Co. Ltd. v. A.G. (Qld.) [1916] St.R.Qd.135. Out of abundance of caution cl.8 expressly refers to relief by injunction, and we have, for completeness, included a reference to declarations, a form of relief which was not available in 1866.

9. Satisfaction of judgments. There are some differences in the provisions of various jurisdictions as to the mode of satisfying judgment against the Crown. As far as the Commission is aware, no such difficulty has hitherto been encountered under the existing provisions of s.8 of the Act of 1866, and cl. 9 of the Bill simply repeats those provisions in modern form.

PART III - RECOVERY BY THE CROWN OF OTHER DEBTS

10. Fines to be recoverable by judgment. Section 3 of The Crown Remedies Act is concerned with recovery by the Crown of fines imposed "otherwise than by judgment or conviction of the court". Instances of fines imposed otherwise than by judgment or conviction must needs be rare and the form which appears in the Schedule to the Act suggests only one case, viz. that of a fine for contempt committed in the face of the court. Evidently such fines are, apart from express statutory provision, not recoverable by judgment.

Clause 10 of the Bill repeats the verbiage of the existing s.3 without substantial alteration.

11. Debts due by recognizance to be recovered by judgment. A recognizance is a bond by which the obligor acknowledges his indebtedness to the Crown and which is subject to a condition of defeasance rendering it void only in event of fulfilment of a specified condition or conditions. The common form of recognizance is the bail bond under which an accused binds himself, with or without sureties, to appear for trial. In the event of non-appearance or other non-fulfilment of the condition of the recognizance, the recognizance is estreated, i.e., the amount of the recognizance is forfeited, and the goods and chattels of a surety may be distrained and sold to satisfy the amount of the recognizance. Section 4 of the Crown Remedies Act provides for a final judgment in a prescribed form to be signed in the Supreme Court for the amount of such recognizance, and declares that no appeal shall be from such judgment.

Clause 11 of the Bill maintains the foregoing procedure but, also confers a power to order imprisonment of the principal in the event that the amount of the recognizance is not paid. To this extent the clause resembles s.5 of the Victorian Crown Proceedings Act.

12. Relief against forfeiture of recognizance. Section 5 of the Crown Remedies Act authorises the court to order satisfaction to be entered upon a judgment for the amount of the estreated recognizance. However, it is established by authority that there is no discretion in the court to refuse the Crown's application to have the recognizance estreated : see R.V. Ralston [1952] Q.W.N. 46, (where Mack J. indicated that he would have exercised the discretion favourably if he had possessed a discretion in that behalf); and also that s.5 confers on the court no general jurisdiction to order that the judgment be regarded as satisfied or discharged simply because the judgment debtor (whether principal or surety) is unable to pay the amount of the judgment: ex parte Muir [1932] V.L.R. 182.

Cases like R.v. Ralston show the law to be too rigid. Clause 12 of the Bill, which is modelled on s.5(3) of the Victorian enactment, is designed to confer on the court a discretion to vary or rescind the order forfeiting the recognizance where it is shown to be unjust "in all the circumstances of the case". Clause 12(1) requires the relevant application to be made within 28 days after the forfeiture order first comes to the notice of the principal or surety, and it is for this reason that cl. 11(4) postpones the issue of a warrant for recovery of moneys due until 28 days from the date of the order.

13. Forms of warrant. Clause 13 prescribes the form of warrant for use where imprisonment has been ordered under clause 11(1).

14. Application to prior forfeiture. In accordance with s.5(6) of the Victorian Act, cl.14 extends the foregoing provisions to the case of a recognizance forfeited before the commencement of the new Act.

15. Notice to accompany warrant. This clause is designed to ensure that the police officer executing a warrant of commitment delivers to the principal a statement in writing informing him of his right to apply for an order under cl.12(1) varying or rescinding the forfeiture order, and allows him time and opportunity to make such an application.

16. Execution of warrant.

17. Application of Justices Act.

18. Duty on receipt of payment. The foregoing provisions, which are derived from subsection 10 to 12 of s.5 of the Victorian Crown Proceedings Act, are self-explanatory.

X

An Act to simplify proceedings by and against the Crown and to consolidate and amend the laws relating to such proceedings.

PART I - PRELIMINARY

1. Short title and commencement: (1) This Act may be cited as the Crown Proceedings Act 1977.

(2) This Act shall come into operation on the first day of 1977.

2. Division of Act. This Act is divided into Parts as follows :-

PART I	-	PRELIMINARY (ss. 1 - 5)
PART II	-	CIVIL PROCEEDINGS BY AND AGAINST THE CROWN (ss. 6 - 9)
PART III	-	RECOVERY BY THE CROWN OF OTHER DEBTS (ss. 10 - 18)
FIRST SCHEDULE	-	ACTS REPEALED
SECOND SCHEDULE	-	FORMS

3. Repeals and savings. (1) The Act specified in Part 1 of the First Schedule shall cease to apply in the State.

(2) The Acts specified in Part 2 of the First Schedule are repealed.

(3) Subject to the provisions of this Act, this Act applies to all proceedings whether commenced before or after the commencement of this Act and in respect of any claim made or based upon a cause of action arising whether before or after the commencement of this Act.

(4) Notwithstanding the provisions of the preceding subsection, where at or before the commencement of this Act notification has appeared in the Government Gazette of the appointment of a nominal defendant pursuant to the provisions of The Claims against Government Act of 1866, all proceedings consequent upon such notification may be commenced, continued and enforced as if this Act had not been passed.

4. Application. (1) This Act binds the Crown ^{and} notwithstanding the provisions of any other Act.

(2) Sections 7, 8 and 9 of this Act apply to proceedings in which any Crown corporation is a party.

(3) Save as provided in section 6, the provisions of this Act shall have effect notwithstanding anything to the contrary in any Act or enactment or any rule of law, practice or procedure.

5. Interpretation. In this Act, unless the context otherwise requires -

"appeal" includes appeal, rehearing and review;

"court" includes tribunal;

"Crown" means Crown in right of the State of Queensland;

"Crown Corporation" means any body corporate constituted by or pursuant to any Act and representing the Crown or entitled to any of the privileges of the Crown;

"judgment" includes decree, order and award;

"proceedings" means action, suit or proceeding of a civil nature.

PART II - CIVIL PROCEEDINGS BY AND AGAINST THE CROWN

6. Proceedings by and against the Crown. [cf. Vic. No. 6232, s.22 (1)] (1) Subject to the provisions of any other Act, any claim by or against the Crown may be made and enforced by proceedings by or against the Crown under the title of the "State of Queensland".

(2) In and for the purpose of any such proceedings against the Crown, any writ of summons, plaint, complaint, originating proceeding, process or other document may be served upon the Crown by service thereof upon the Crown Solicitor or person authorised to accept service on his behalf.

7. Procedure. [cf. Vic. No. 6232, s.22; Qld. 29 Vic. No. 23, s.5] Any proceedings by or against the Crown -

(a) shall be commenced in the court which would have jurisdiction if the proceedings were between subject and subject;

(b) shall be commenced in the same manner, and the proceedings and the rights (including rights of appeal) of the parties therein shall as nearly as possible be the same and judgment and costs shall follow on either side as in ordinary proceedings between subject and subject in such court.

8. Nature of relief. [cf. Qld. 29 Vic. No. 23, s.7]. In any proceedings by or against the Crown, all necessary judgments may be given, and, according to the nature of the case, shall include every species of relief, whether by way of specific performance, injunction, declaration, restitution of rights or chattels, recovery or delivery of land or chattels, or payments of money or damages, or otherwise.

9. Satisfaction of judgment. [cf. Qld. 29 Vic. No. 23, s.8] (1) Any judgment decree, order or award for or of any money, damages or costs in proceedings against the Crown shall be satisfied by the Treasurer by payment out of any moneys -

- (a) in his hands for the time being legally applicable thereto; or
- (b) which may be voted by Parliament for that purpose.

(2) In the event of any such payment not being duly made by the Treasurer execution may be had and the same may be levied by distress and sale upon 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 Legislature;
- (c) the Supreme Court and other court houses and offices pertaining thereto; and
- (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 OTHER DEBTS

10. Fines to be recoverable by judgment. [cf. Qld. 38 Vic. No. 13, s.3; Vict. No. 6232, s.4.]. (1) When any fine is imposed on any person otherwise than by a judgment or conviction of some court, a Judge or Magistrate of the court by which or by whom such fine is imposed if the same is not immediately paid shall by writing under his hand in Form 1 of the Second Schedule to this Act or to the like effect certify -

- (a) the fact that such fine has been so imposed;
- (b) the name and place of residence or business of the person on whom such fine has been so imposed; and
- (c) the cause and amount of such fine -

and shall deliver or send such writing to the Attorney-General.

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

(3) Every such judgment may be in Form 2 of the Second Schedule to this Act or to like effect.

(4) No appeal shall lie or be available in respect of a judgment under this section.

11. Debts due by recognizance to be recovered by judgment. [cf. Qld. 38 Vic. No. 13, s.4; Vic. No. 6232, s.5.]. (1) Where a court is satisfied that a person has failed to observe a condition of a recognizance to Her Majesty the court shall declare the recognizance to be forfeited and shall order that the amount of the recognizance be paid to the registrar of the court or the clerk of the Magistrates Court (as the case requires), forthwith or within such time as the court allows and may further order that in default of payment of that amount in accordance with the order -

- (a) in the case of the principal he be imprisoned for the term (not exceeding two years) fixed by the order; and
- (b) in the case of a surety that the amount be recoverable by execution against the goods and chattels of the surety.

(2) Every order under subsection (1) shall be in writing in the form or to the effect of Form 3 in the Second Schedule, shall be signed by the Judge or Magistrate presiding, and shall be delivered to the registrar or clerk (as the case requires)..

(3) Where a court makes an order under sub-section (1) in the absence of a principal the registrar or clerk (as the case requires) shall send by post addressed to the principal and to each of the sureties (if any) at the respective addresses shown in the recognizance a notice in writing signed by the registrar or clerk setting forth -

- (a) particulars of the order made against the principal and each of the sureties (if any); and
- (b) a statement that a warrant of commitment or a warrant of execution (as the case requires) will issue after the expiration of twenty-eight days or such extra time as the Court may have allowed under subsection (1) unless -
 - (i) the amount due under the order is paid;
 - (ii) an order is made for the payment of the amount by instalments; or
 - (iii) application is made under section 12 for the rescission or variation of the order.

(4) Where a court makes an order under subsection (1) of this section in the absence of a principal no warrant shall issue under the order until after the expiration of twenty-eight days from the day the order is made or such extra time as the court may have allowed under the said subsection (1).

12. Relief against forfeiture of recognizance. (cf. Vic. No. 6232 s.5 (3)]. (1) Where a recognizance has been forfeited under subsection (1) of section 11 any principal or surety may at any time within twenty-eight days or such extra time as the court may have allowed under subsection (1) of section 11 after the making of the order or, if the order was made in the absence of the principal or surety, within twenty-eight days after the order first comes to his notice apply -

- (i) in the case of an order made by the Supreme Court or the District Court - to a Judge of the Court making the order; or
- (ii) in the case of an order made by a Magistrates Court - to a Stipendiary Magistrate -

to vary or rescind the order on the ground that it would be unjust to require him to pay the amount of the recognizance having regard to all the circumstances of the case; and the judge or magistrate may vary or rescind the order and cancel any warrant issued in the case under the provisions of this Part before the warrant so issued is executed.

(2) Every application under subsection (1) shall be in writing in the prescribed form signed by the person making the application, shall set forth the grounds of the application, and shall be lodged with the registrar or clerk of the court concerned (as the case requires).

(3) Not less than 28 days before the hearing of an application under this section the applicant shall serve or cause to be served personally or by post on the complainant or, in the case of an indictment, the Crown Solicitor, a true copy of the application lodged with the registrar or clerk of the court concerned. Provided that with the consent of the parties the application may be heard at a time earlier than twenty-eight days after such service.

(4) At any time after the lodging of an application under subsection (1) the applicant may apply ex parte to a Judge or Stipendiary Magistrate (as the case requires) for a stay of proceedings in the matter, and upon any such application the judge or magistrate may direct the return of any warrant unexecuted or may stay the issue or execution of any such warrant pending the determination of an application under subsection (1).

(5) The Governor in Council may make regulations prescribing forms for the purposes of this section.

13. Forms of warrant. [cf. Vic. No. 6232, s.5(4)] (1) Every warrant for the committal of a principal to prison pursuant to the provisions of subsection (1) of section 11 shall be in or to the effect of the form set forth in Form 4 in the Second Schedule.

(2) Every warrant of execution against the goods and chattels of a surety to a forfeited recognizance shall be in or to the effect of the form set forth in Form 5 in the second schedule.

14. Application to prior forfeiture. [cf. Vic. NO. 6232, s.5(6)] (1) Where at any time within a period of twelve months prior to the commencement of this Act a recognizance was forfeited by any court or judge or magistrate or justices and the amount of the recognizance, or

any part thereof, is due and unpaid at the said commencement the following provisions shall, subject to sub-section (2), apply:-

- (a) In the case of a principal - the principal shall be liable, in default of payment of the amount due and payable at the same commencement, to be imprisoned for one day in respect of every \$2 of the amount of the forfeited recognizance then remaining unpaid but not in any case exceeding two years; and
- (b) In the case of a surety - that the amount of the recognizance due and payable by him at the said commencement shall be recoverable by execution against the goods and chattels of the surety.

(2) Where it appears to the registrar of the court, or a clerk of the Magistrates Court (as the case requires), that a person has made default in the payment of moneys due and payable under a recognizance forfeited before the said commencement the registrar or clerk shall serve or cause to be served on the person a notice in writing to the effect that if the amount of the recognizance is not paid within fourteen days after the issue of the notice a warrant will be issued for the committal of such person to prison or for execution against the goods and chattels of such person (as the case requires) in accordance with the provisions of subsection (1).

(3) The provisions of section 12 shall extend and apply with respect to moneys due under a recognizance forfeited before the commencement of this Act in all respects as if the provisions of section 14 were incorporated in an order made by the court by which the recognizance was forfeited on the day on which the notice in writing under subsection (2) is issued.

(4) A notice referred to in subsection (2) may be served personally or by post.

(5) If after the expiration of fourteen days after the issue of a notice referred to in subsection (2) any moneys due under the recognizance remain unpaid the registrar or clerk (as the case requires) shall issue a warrant under his hand for the committal of such person to prison or for execution against the goods and chattels of such person (as the case requires) in accordance with the provisions of subsection (1) of this section.

15. Notice to accompany warrant. [cf. Vic. No. 6232, s.5(9A)]
The registrar of the court or clerk of the Magistrates Court (as the case requires) shall attach or cause to be attached to every warrant issued under this Part a notice in the prescribed form addressed to the member of the police force executing the warrant requiring such member to deliver to the principal or surety before the

execution of the warrant a statement in writing in the prescribed form with respect to the provisions of subsection (1) section 12 and shall allow the principal or surety, as the case may be, reasonable time and opportunity to make application thereunder should he so desire.

16. Execution of warrant. [cf. Vic. No. 6232 s.5(10)]. Any 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 be sooner paid and the keeper of the prison shall receive into his custody any person referred to in a warrant of commitment and safely keep him for the term or period on the warrant named unless the said amount be sooner paid or unless he is otherwise removed or discharged from custody by due course of law.

17. Application of Justices Acts. [cf. Vic. No. 6232, s.5(11)]. The provisions of the Justices Act 1886 - 1976 with respect to warrants and to the payment or part payment of moneys shall, so far as those provisions are applicable and with such modifications as are necessary, extend and apply with respect to the recovery of moneys payable under forfeited recognizances and in particular with the following modifications, namely:-

- (a) Any reference in those provisions to a warrant shall be read and construed as if it were a reference to a warrant issued for the purposes of this section;
- (b) Any reference in those provisions to a fine or penalty or other sum adjudged to be paid under a conviction or order of a Magistrates Court or a justice or justices shall be read and construed as if it were a reference to an order made for the recovery of the moneys payable under a forfeited recognizance;
- (c) Any reference in those provisions to a Magistrates Court or justice shall be read and construed as if it were a reference to the court Judge or Magistrate making an order forfeiting a recognizance; and
- (d) Any reference in those provisions to a clerk of the Magistrates Court or clerk of petty sessions shall be read and construed as if it included a reference to the registrar of the court.

18. Duty on receipt of payment. [cf. Vic. No. 6232, s.5(12)]. The keeper of a prison shall on receiving payment of moneys payable under a forfeited recognizance forthwith pay the amount received to the registrar or clerk who issued the warrant (as the case requires).

FIRST SCHEDULE

s.3

Number of Act

Short Title

PART I

20 Vic. No. 3

The Costs in Crown Suits Act of 1856

PART II

29 Vic. No. 23

The Claims against Government Act
[of 1866]

38 Vic. No. 13

The Crown Remedies Acts, 1874 to 1956

SECOND SCHEDULE

Form 1

This is to certify to the Attorney-General that at the
this day held at the several
persons whose names and places of abode or business are specified in the
schedule below were fined the several sums set opposite to their
respective names in the said schedule and the cause of such fines is
duly and truly set forth in the same schedule.

The Schedule

Proper Full Name	Place of Abode or Business	Cause of Fine	Amount
		Behaving and con- ducting himself in a disorderly manner in court.	\$ ¢
Total		\$

Given under my hand this day of 19

Judge.

F O R M 2

QUEENSLAND

(to wit)

The Attorney-General for the State of Queensland having informed the Court that at the Magistrates Court of Queensland held at _____ on the _____ day of _____ 19 _____ before J.G.F. Esquire Stipendiary Magistrates a fine of _____ dollars was imposed and inflicted upon A.B. for that the said A.B. [behaved and conducted himself in a disorderly manner in the said court or as the case may be] as appears from the certificate of the said J.G.F. Esquire filed herein.

It is this day adjudged that the State of Queensland do recover against the said A.B. the said sum of _____ and also the sum of \$ _____ for costs making a total of \$ _____

ORDER FORFEITING A RECOGNIZANCE

In the Court.

IN THE MATTER of a Recognizance to Her Majesty

wherein -

A.B. is Principal
and

C.D. is
are Surety

WHEREAS on the day of 19 in the Court at in the State of Queensland

A.B. of in the said State as Principal and
C.D. of in the said State as Surety severally
acknowledged themselves to owe to Her Majesty the amount of
\$ conditioned (for the appearance of A.B. in the said
court on the day of 19) :

AND WHEREAS the said A.B. has failed in the condition of
the recognizance:

NOW THEREFORE this court hereby declares the said recognizance
to be forfeited and orders as follows :-

- (i) that A.B. do pay the amount of \$ to the Registrar [Clerk of the Magistrates Court] at within days after the date of this order and that in default of payment of the amount within that time that the defendant be imprisoned for the term of ;
- (ii) that C.D. do pay the amount of \$ to the Registrar [Clerk of the Magistrates Court] at within days after the date of this order.

DATED at this day of 19 .

Judge of the Supreme Court.
Judge of the District Court.
Stipendiary Magistrate.

WARRANT OF COMMITMENT FOR NON-PAYMENT OF MONEYS DUE UNDER

A FORFEITED RECOGNIZANCE

In the Court.

IN THE MATTER of a Recognizance to Her Majesty
wherein -

A.B. is Principal
and
C.D. is are Surety

To and to all other members of the Police Force in
the State of Queensland and to the keeper of the prison at
in the said State or any other prison which is
more accessible or more convenient.

The said A.B. having entered as principal into a recognizance
to Her Majesty in the sum of \$ with surety in the sum
of \$ conditioned for (the appearance of the said A.B. at
the Court at on the
day of 19); the said A.B. having failed to observe the
condition of the recognizance and the Court having
declared the recognizance to be forfeited and ordered A.B. as
principal (and C.D. as surety) to pay the sum of \$ due and
payable under the recognizance and the said (A.B.) not having paid
the sum as ordered :

These are to command you the member of the Police Force executing
this warrant to take the said (A.B.) unless the said sum of \$
is sooner paid to you the said member of the Police Force and (him)
(her) safely convey to the prison at aforesaid or
any other gaol which is more accessible or more convenient and there
deliver (him)(her) to the said keeper with this warrant.

And I do command you the said keeper to receive the said (A.B.)
into your custody in such prison there to imprison (him)(her) for the
period of unless the said sum of \$
is sooner paid to you the said keeper and for so doing this shall be
your sufficient warrant.

DATED at this day of 19 .

Registrar of the Supreme/District Court.
Clerk of the Magistrates Court.

WARRANT OF EXECUTION FOR MONEYS DUE UNDER A
FORFEITED RECOGNIZANCE

In the Court.

IN THE MATTER of a Recognizance to Her Majesty
wherein -

A.B. is Principal
and
C.D. is
are Surety.

To the principal police officer at in the
State of Queensland and to all other police officers in the said
State.

The said A.B. having entered as principal into a recognizance
to Her Majesty in the sum of \$ with surety in the sum of
\$ conditioned for (the appearance of the said A.B. at the
Court at on the day of

19): the said A.B. having failed to observe the
condition of the recognizance and the Court at

having declared the recognizance to be forfeited and ordered
C.D. as surety to pay the sum of \$ and it was thereby ordered that
if the said sum of \$ were not paid on or before the
day of 19 , then next, the same should be levied by execution against
the goods and chattels of the said C.D. And whereas the said C.D. has
not paid the said sum of \$ (or any part thereof): These are
therefore to command you, in Her Majesty's name, forthwith to take
the goods and chattels of the said C.D., and if within the space of
days after taking them the said sum of \$
together with the reasonable charges of taking and keeping the said
goods and chattels are not paid, that then you sell the said goods and
chattels and pay the money arising from such sale to Registrar of the
Court at in the said State clerk of the court
and if no goods and chattels can be found then that you
certify the same to me.

Given under my hand at , in the said State,

this day of 19 .

Registrar of the Supreme/District Court.

Clerk of the Magistrates Court.