

Version No. 044
Crown Proceedings Act 1958
No. 6232 of 1958

Version incorporating amendments as at 1 January 2010

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Version No. 044
Crown Proceedings Act 1958
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An Act to consolidate the Law relating to the Protection and Recovery of Crown Property and to Civil Proceedings by and against the Crown.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title, commencement and division

This Act may be cited as the **Crown Proceedings Act 1958**, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette, and is divided into Parts as follows:

Part I—Recovery of Debts and Property by the Crown ss 3–19

Part II—Civil Proceedings by and against the Crown ss 20–27.

2 Repeal

- (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.

s. 2

- (2) Except as in this Act expressly or by necessary implication provided—
- (a) all persons things and circumstances appointed or created by or under either of the repealed Acts or existing or continuing under either of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;
 - (b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any rule summons writ proceeding information fiat certificate judgment order decree fine arrest recognisance bond assignment satisfaction appeal penalty liability or right made issued presented granted given entered imposed accrued incurred or acquired or existing or continuing by or under either of such repealed Acts before the commencement of this Act.
-

PART I—RECOVERY OF DEBTS AND PROPERTY BY THE CROWN

3 Mode of recovering Crown debts

No. 3665 s. 3.

All debts damages duties sums of money land or goods due payable or belonging to Her Majesty shall be sued for and recovered by the means and in the manner hereinafter mentioned.

4 Fines to be recoverable by judgment

No. 3665 s. 4.

S. 4
amended by
Nos 57/1989
s. 3(Sch. item
48.1(a)(b)),
74/2000
s. 3(Sch. 1
item 32).

When any fine is imposed upon any person otherwise than by a judgment or conviction of some court, the judge or the magistrate by whom such fine is imposed if the same is not immediately paid shall by writing under his hand in the form contained in the Second Schedule to this Act or to the like effect certify that fact together with the name and place of abode or business of the person on whom such fine has been so imposed and the cause and amount of such fine; and shall deliver or send by the post to a law officer such writing, and upon receipt thereof the law officer shall cause a final judgment to be signed in the Supreme Court for the amount of such fine and \$10¹ for costs; and every such judgment may be in the form contained in the Third Schedule to this Act or to the like effect, and no writ of error or appeal shall lie or be had therefrom.

5 Recovery of moneys payable under forfeited recognisances

S. 5
substituted by
No. 7900 s. 2,
amended by
No. 8124
s. 2(a)(b).

(1) Where a court is satisfied that a person has failed to observe a condition of a recognisance to Her Majesty the court shall declare the recognisance to be forfeited and shall order that the amount of the

S. 5(1)
amended by
No. 57/1989
s. 3(Sch. item
48.2(a)).

s. 5

recognisance be paid to the proper officer of the court forthwith or within such time as the court allows and that in default of payment of that amount in accordance with the order—

- (a) in the case of a principal—that 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 obtained by seizing and selling the property of the surety and in default, in whole or in part, that the surety be imprisoned for the term (not exceeding two years) fixed by the order.

S. 5(1)(b)
amended by
No. 57/1989
s. 3(Sch. item
48.2(b)(i)(ii)).

- (2) Every order under subsection (1) shall be in writing in the prescribed form, shall be signed by the judge or magistrate presiding and shall be delivered to the proper officer of the court.

S. 5(2)
amended by
Nos 9008
s. 2(1)(Sch.
item 3(a)(i)),
57/1989
s. 3(Sch. item
48.3(a)(b)).

- (2A) Where a court makes an order under subsection (1) in the absence of a principal the proper officer of the court shall send by post addressed to the principal and to each of the sureties (if any) at the respective addresses shown in the recognisance a notice in writing signed by the proper officer setting forth—

S. 5(2A)
inserted by
No. 8124 s. 3,
amended by
No. 57/1989
s. 3(Sch. item
48.4(a)(b)).

- (a) particulars of the order made against the principal and each of the sureties (if any); and
- (b) a statement that a warrant to imprison, a warrant of seizure and sale or a warrant to seize property (as the case requires) will issue after the expiration of twenty-eight days unless—

S. 5(2A)(b)
amended by
No. 57/1989
s. 3(Sch. item
48.4(c)).

- (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 subsection (3) for rescission or variation of the order.
- (2B) Where a court makes an order under subsection (1) in the absence of a principal no warrant shall issue for the recovery of moneys due under the order until after the expiration of twenty-eight days from the day the order is made.
- (3) (a) Where a recognisance has been forfeited under subsection (1) any principal or surety may at any time within twenty-eight days 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 to the court that made the order to vary or rescind the order on the ground that it would be unjust to require him to pay the amount of the recognisance having regard to all the circumstances of the case and the court may vary or rescind the order and cancel any warrant issued in the case under the provisions of this section before the warrant so issued is executed.
- (b) Every application under paragraph (a) 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 proper officer of the court a reasonable time in the circumstances before the hearing of the application.
- S. 5(2B) inserted by No. 8124 s. 3.**
- S. 5(3) amended by No. 8124 s. 4(1).
S. 5(3)(a) amended by Nos 16/1986 s. 30, 19/1989 s. 16(Sch. item 17.1(a)(b)), 57/1989 s. 3 (Sch. item 48.5(a)(i)(ii)) (as amended by No. 34/1990 s. 5(Sch. 4 item 45)).**
- S. 5(3)(b) amended by No. 57/1989 s. 3(Sch. item 48.5(b)).**

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s. 5

S. 5(3)(c)
amended by
Nos 8124
s. 4(2), 9848
s. 18(1),
57/1989 s. 3
(Sch. item
48.5(c)),
68/2009
s. 97(Sch.
item 42.1).

(c) Not less than twenty-eight days before the hearing of an application under this subsection the applicant shall serve or cause to be served personally or by post on the informant or complainant or, in the case of an indictment, the Director of Public Prosecutions a true copy of the application lodged with the proper officer of the court.

S. 5(3)(d)
inserted by
No. 8124
s. 4(3),
amended by
Nos 19/1989
s. 16(Sch.
item 17.2),
57/1989
s. 3(Sch. item
48.5(d)(i)(ii))
(as amended
by No.
34/1990
s. 5(Sch. 4
items 46, 47)).

(d) At any time after the lodging of an application under paragraph (a) the applicant may apply ex parte to a court for a stay of proceedings in the matter and upon any such application the court 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 paragraph (a).

S. 5(3)(e)
inserted by
No. 8124
s. 4(3).

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

S. 5(4)
amended by
Nos 9008
s. 2(1)(Sch.
item 3(a)(ii)),
57/1989
s. 3(Sch. item
48.6).

(4) Every warrant to imprison a principal pursuant to the provisions of paragraph (a) of subsection (1) shall be in or to the effect of the prescribed form.

S. 5(5)
amended by
Nos 9008
s. 2(1)(Sch.
item 3(a)(iii)),
57/1989
s. 3(Sch. item
48.7(a)–(c)).

(5) Every warrant of seizure and sale and warrant to seize property of a surety to a forfeited recognisance shall be in or to the effect of the prescribed form and every warrant to imprison a surety shall be in or to the effect of the prescribed form.

S. 5(6)–5(9)
repealed.²

* * * * *

- (9A) The proper officer of the court shall attach or cause to be attached to every warrant to imprison issued under this section 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 (3) and shall allow the principal or surety, as the case may be, reasonable time and opportunity to make application thereunder should he so desire.
- (10) Any member of the police force to whom a warrant under this section 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 gaol shall receive into his custody any person referred to in a warrant to imprison 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.
- (11) The provisions of the **Magistrates' Court Act 1989** 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 recognisances 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;

S. 5(9A)
inserted by
No. 8124
s. 4(5),
amended by
No. 57/1989
s. 3(Sch. item
48.8(a)(b)).

S. 5(10)
amended by
No. 57/1989
s. 3(Sch. item
48.9).

S. 5(11)
amended by
Nos 8124
s. 4(6)(a)(b),
8731 s. 173,
57/1989 s. 3
(Sch. item
48.10(a)).

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S. 5(11)(b)
amended by
No. 57/1989
s. 3(Sch. item
48.10(b)).

(b) any reference in those provisions to a fine or other sum adjudged to be paid under a conviction or order of the Magistrates' Court 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 recognisance;

S. 5(11)(c)
amended by
No. 57/1989
s. 3(Sch. item
48.10(c)(i)(iii)).

(c) any reference in those provisions to the Magistrates' Court shall be read and construed as if it were a reference to the court making an order forfeiting a recognisance; and

S. 5(11)(d)
amended by
No. 57/1989
s. 3(Sch. item
48.10(d)).

(d) any reference in those provisions to a registrar of the magistrates' court shall be read and construed as if it included a reference to the Prothonotary or the Registrar of the County Court (as the case requires).

S. 5(12)
amended by
Nos 9008
s. 2(1)(Sch.
item 3(a)(v)),
57/1989
s. 3(Sch. item
48.11).

(12) The officer in charge of a prison shall on receiving payment of moneys payable under a forfeited recognisance forthwith pay the amount received to the proper officer of the court.

S. 5(13)
amended by
No. 19/1989
s. 16(Sch.
item 17.3),
repealed by
No. 57/1989
s. 3(Sch. item
48.12).

* * * * *

6 Breach of bail

S. 6
repealed by
No. 7900 s. 3,
new s. 6
inserted by
No. 9008
s. 2(1)(Sch.
item 3(b)).

(1) Where a court is satisfied that a person has failed to observe a condition of bail the court shall declare the bail to be forfeited and shall order that the amount undertaken by the surety or sureties to be paid to Her Majesty in the event of such a breach be paid to the proper officer of the court forthwith or within such time as the court allows and that in default of payment of that amount in accordance with the order that the amount be obtained by seizing and selling the property of the surety or sureties and in default, in whole or in part, that the surety or sureties be imprisoned for the term (not exceeding two years) fixed by the order.

S. 6(1)
amended by
No. 57/1989
s. 3(Sch. item
48.13(a)–(c)).

(1A) Where a court makes an order under subsection (1) and the surety has pursuant to section 9(3) of the **Bail Act 1977** lodged in cash the amount of the bail or lodged by way of security a pass-book, stock card or other document for operating an account the court shall order that the cash lodged be forfeited or that the amount of the bail be withdrawn from the account (as the case may be) and that the amount of the bail be paid to the proper officer of the court.

S. 6(1A)
inserted by
No. 9158 s. 6,
amended by
No. 57/1989
s. 3(Sch. item
48.14).

(2) Every order under subsection (1) shall be in the prescribed form, shall be signed by the judge, or magistrate presiding and shall be delivered to the proper officer of the court.

S. 6(2)
amended by
No. 57/1989
s. 3(Sch. item
48.15(a)(b)).

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s. 6

S. 6(3)
amended by
No. 57/1989
s. 3(Sch. item
48.16(a)(b)).

(3) Where a court makes an order under subsection (1) in the absence of a surety or sureties the proper officer of the court shall send by post addressed to each of the absent sureties at his address shown in the undertaking of bail a notice in writing signed by the proper officer of the court setting forth—

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

(b) a statement that a warrant of seizure and sale or a warrant to seize property will issue after the expiration of 28 days 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 subsection (4) for rescission or variation of the order.

S. 6(4)
amended by
Nos 16/1986
s. 30, 19/1989
s. 16(Sch.
item
17.4(a)(b)),
57/1989 s. 3
(Sch. item
48.17(a)) (as
amended by
No. 34/1990
s. 5(Sch. 4
item 48)).

(4) Where bail is declared to be forfeited under subsection (1) any surety may at any time within 28 days after the making of the order or, if the order was made in the absence of the surety, within 28 days after the order first comes to his notice apply to the Court that made the order to vary or rescind the order on the ground that it would be unjust to require him to pay the amount undertaken to be paid having regard to all the circumstances of the case and the court may vary or rescind the order and cancel any warrant issued in the case under the provisions of this section before the warrant so issued is executed.

S. 6(5)
amended by
No. 57/1989
s. 3(Sch. item
48.18).

(5) Every application under subsection (4) 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 proper officer of the court a reasonable

time in the circumstances before the hearing of the application.

- (6) Not less than 28 days before the hearing of an application under subsection (4) the applicant shall serve or cause to be served personally or by post—
- (a) on the informant or complainant; or
 - (b) where the informant is a member of the police force—on the officer in charge of the police station nearest to the court where the application is to be heard; or
 - (c) in the case of an indictment or an appeal—the Director of Public Prosecutions—
- a true copy of the application lodged with the proper officer of the court.
- (7) At the time after the lodging of an application under subsection (4) the applicant may apply ex parte to a court for a stay of proceedings in the matter and upon any such application the court may direct the return of any warrant unexecuted or may stay the issue or execution of a warrant pending the determination of the application.
- (8) The Governor in Council may make regulations prescribing forms for the purposes of this section.
- (9) Every warrant of seizure and sale and warrant to seize property of a surety to forfeited bail shall be in or to the effect of the prescribed form and every warrant to imprison a surety shall be in or to the effect of the prescribed form.

S. 6(6)
amended by
No. 57/1989
s. 3(Sch. item
48.19(b)).

S. 6(6)(c)
amended by
Nos 57/1989
s. 3(Sch. item
48.19(a)),
68/2009
s. 97(Sch.
item 42.2).

S. 6(7)
amended by
Nos 19/1989
s. 16(Sch.
item 17.5),
57/1989
s. 3(Sch.
item 48.20
(a)(b)) (as
amended by
No. 34/1990
s. 5(Sch. 4
items 49, 50)).

S. 6(9)
amended by
No. 57/1989
s. 3(Sch. item
48.21(a)–(c)).

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S. 6(10)
amended by
No. 57/1989
s. 3(Sch. item
48.22(a)(b)).

(10) The proper officer of the court shall attach or cause to be attached to every warrant to imprison issued under this section a notice in the prescribed form addressed to the member of the police force executing the warrant requiring such member to deliver to the surety before the execution of the warrant a statement in writing in the prescribed form with respect to the provisions of subsection (4) and shall allow the surety reasonable time and opportunity to make application thereunder should he so desire.

S. 6(11)
amended by
No. 57/1989
s. 3(Sch. item
48.23).

(11) Any member of the police force to whom a warrant under this section is directed shall execute the warrant according to its tenor unless the amount of money specified in the warrant be sooner paid and the officer in charge of the prison shall receive into his custody any person referred to in a warrant to imprison and safely keep him for the period stated in the warrant unless the amount be sooner paid or unless he is otherwise removed or discharged from custody by due course of law.

S. 6(12)
amended by
No. 57/1989
s. 3(Sch. item
48.24(a)).

(12) The provisions of the **Magistrates' Court Act 1989** 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 bail undertakings 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;

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s. 6

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| (b) any reference in those provisions to a fine or other sum adjudged to be paid under a conviction or order of the Magistrates' Court shall be read and construed as if it were a reference to an order made for the recovery of the moneys payable under forfeited bail; | S. 6(12)(b) amended by No. 57/1989 s. 3(Sch. item 48.24(b)). |
| (c) any reference in those provisions to the Magistrates' Court shall be read and construed as if it were a reference to a court declaring bail to be forfeited; | S. 6(12)(c) amended by Nos 19/1989 s. 16(Sch. item 17.6), 57/1989 s. 3(Sch. item 48.24 (c)(i)(ii)) (as amended by No. 34/1990 s. 5(Sch. 4 item 51)). |
| (d) any reference in those provisions to a registrar of the Magistrates' Court shall be read and construed as if it included a reference to the Prothonotary or the Registrar of the County Court (as the case requires). | S. 6(12)(d) amended by No. 57/1989 s. 3(Sch. item 48.24(d)(i)(ii)). |
| (13) The officer in charge of a prison shall on receiving payment of moneys payable under bail declared to be forfeited forthwith pay the amount received to the proper officer of the court. | S. 6(13) amended by No. 57/1989 s. 3(Sch. item 48.25). |
| * * * * * | S. 6(14) amended by No. 19/1989 s. 16(Sch. item 17.7), repealed by No. 57/1989 s. 3 (Sch. item 48.26). |

No. 3665 s. 7.
S. 7
amended by
No. 19/1989
s. 16(Sch.
item 17.8).

7 Other debts and duties to be recoverable by Crown suit

When any debt duty or sum of money is due to Her Majesty otherwise than upon or by virtue of any recognisance Her Majesty may cause to be sued out of the Supreme Court a certain writ to be called a writ of *capias ad respondendum*; and every such writ may be in the form contained in the Sixth Schedule to this Act or to the like effect, and shall be executed by the sheriff or other officer or person to whom the same is directed, and shall be deemed and taken to be the commencement of a Crown suit: Provided always that it shall be lawful for Her Majesty to order the sheriff or other officer or person to whom such writ is directed not to arrest any one or more of the defendants but to serve a copy thereof only on such defendant or defendants, which order shall be duly obeyed by such sheriff or other officer or person; and such service shall be of the same force and effect as the service of a writ in any civil proceeding between subject and subject; and no such writ shall be issued except upon a fiat under the hand of the Attorney-General in the form contained in the Seventh Schedule to this Act or to the like effect stating the mode in which the same (so far as regards the execution or service thereof) is to be indorsed; and before signing any such fiat the Attorney-General shall by due inquiry in that behalf satisfy himself that such indorsement is reasonable and proper under the circumstances of the case.

No. 3665 s. 8.

8 Bail bonds in Crown suits assignable

If any person is arrested under or by virtue of any such writ as last aforesaid and the sheriff or other officer or person to whom the same is directed takes bail from such person, such sheriff or other officer or person at the request of the Attorney-

General shall assign to Her Majesty the bail bond taken from such person by indorsing and attesting the same under his hand and seal in the presence of two or more credible witnesses; and if such bail bond is forfeited, such process shall thereupon issue as on bonds originally made to Her Majesty.

9 Proceedings indorsed on writ may be taken

No. 3665 s. 9.

All such steps and proceedings as are mentioned in or upon any writ issued under this Part or in any notice issued according to the course and practice for the time being of the Supreme Court shall and may with such alterations modifications and substitutions as are necessary be had and taken in the same manner as if the same were expressly directed by this Part.

10 Form of information

No. 3665 s. 10.

In lieu of the indorsement of claim in a civil proceeding between subject and subject, a complaint shall be filed or delivered (as the case may be) by the Attorney-General for and on behalf of Her Majesty; and in the complaint the cause of complaint shall be set forth in the same manner and form as nearly as may be as in any such indorsement of claim as aforesaid; and the complaint shall commence and conclude in the form contained in the Eighth Schedule to this Act or to the like effect.

S. 10
amended by
Nos 19/1989
s. 16(Sch.
item 17.9
(a)(b)), 57/1989
s. 3 (Sch. item
48.27(a)–(c)).

11 Proceedings to be the same as in actions

No. 3665 s. 11.

The time form and manner of process and proceeding in any Crown suit, except where it is otherwise provided by this Act, shall be the same as nearly as may be as by any law or rule of practice or pleading now or hereafter to be in force in the Supreme Court is directed in any civil proceeding between subject and subject.

S. 11
amended by
No. 19/1989
s. 16(Sch.
item 17.10).

No. 3665 s. 12.

S. 12
amended by
Nos 19/1989
s. 16(Sch.
item 17.11),
35/1996
s. 453(Sch. 1
item 20),
18/2005
s. 18(Sch. 1
item 31).

12 Persons may defend in forma pauperis

When any person against whom any proceedings under this Part are instituted in the Supreme Court is disabled by poverty from making defence thereto, it shall be competent for such person to petition the court on affidavit verifying such disability; and the court, on being satisfied of the truth of the facts alleged in such affidavit, may assign Australian legal practitioners (within the meaning of the **Legal Profession Act 2004**) to such person; and the Australian legal practitioners so assigned are hereby required to act for such person without fee.

No. 3665 s. 13.

S. 13
amended by
No. 19/1989
s. 16(Sch.
item 17.12).

13 Appeal for new trial etc.

An appeal or motion for a new trial or to enter a verdict or in arrest of judgment or for judgment non obstante veredicto shall be allowed and be made and granted in the same manner and upon the same terms in all respects as by any law or rule of practice now or hereafter in force is directed in any civil proceeding between subject and subject.

No. 3665 s. 14.

S. 14
amended by
No. 19/1989
s. 16(Sch.
item 17.13).

14 Suits relating to land or goods

The possession of land belonging to Her Majesty shall and may be recovered and obtained by proceedings in the same form as nearly as may be as in a proceeding for the recovery of land between subject and subject; and the possession of goods or damages for detaining taking damaging or converting them or for trespassing upon land shall and may be recovered in the same manner as is hereinbefore directed with respect to any debt duty or sum of money due to Her Majesty otherwise than upon or by virtue of a recognisance.

15 Execution in detinue and ejectment

In all Crown suits in the nature of ejectment or detinue, such warrants of execution as by any law or rule of practice now or hereafter in force are or can be issued in any civil proceeding of the same nature between subject and subject for the recovery of land goods or writings shall and may be issued on behalf of Her Majesty; and where part of any such warrant is or may be for seizure and sale, such part may consist of the writ next hereinafter mentioned.

No. 3665 s. 15.
S. 15
amended by
No. 19/1989
s. 16(Sch.
item 17.14
(a)-(d)).

16 Execution in other cases

All sums recovered by Her Majesty by any judgment under this Part shall and may be levied and recovered by virtue of a writ to be called a fieri capias; and every such last-mentioned writ may be in the form contained in the Ninth Schedule to this Act or to the like effect; and Her Majesty may levy the poundage fees and expenses of execution over and above the sum recovered, and shall have all such rights powers and remedies for obtaining and compelling satisfaction of any judgment as by any law now or hereafter in force are available in a civil proceeding between subject and subject.

No. 3665 s. 16.
S. 16
amended by
No. 19/1989
s. 16(Sch.
item 17.15).

17 Property of Crown debtors bound as property of subjects' debtors

Except where it is otherwise provided by this Part Her Majesty shall not enforce a demand against a public debtor or accountant or against any of his property in any other manner than one subject could enforce a claim against another subject and his property; and shall have such and the same lien claim and rights as any subject has and can enforce, and no other.

No. 3665 s. 17.

s. 18

No. 3665 s. 18.

S. 18
amended by
No. 19/1989
s. 16(Sch.
item 17.16).

18 Title of the cause and costs of suit

In all pleadings and proceedings under this Part and in all affidavits notices consents summonses and rules to be used therein, the title of the cause or proceedings shall be stated to be "The Queen against" the person sued (naming him) and no other title whatsoever shall be necessary; and Her Majesty shall be entitled to full costs of suit in all cases in which a plaintiff in any civil proceeding between subject and subject would be entitled thereto.

S. 19
amended by
No. 19/1989
s. 16(Sch.
item 17.17),
repealed by
No. 57/1989
s. 3(Sch.
item 48.29).

* * * * *

**PART II—CIVIL PROCEEDINGS BY AND AGAINST THE
CROWN**

**20 Application to causes of action arising after
1 January 1956**

No. 5874
s. 1(2).

The provisions of this Part shall apply only in respect of causes of action arising after the commencement of the **Crown Proceedings Act 1955**.

21 Definition

No. 5874 s. 2.

In this Part unless inconsistent with the context or subject-matter *proceeding* means action suit or proceeding of a civil nature.

**22 In what courts proceedings to be taken by or against
the Crown**

No. 5874 s. 3.

- (1) Every proceeding which may be taken by or against the Crown under this Part shall be taken in the court which would have jurisdiction if the proceeding were between subject and subject.
- (2) Every proceeding under this Part shall be taken by or against the Crown under the title of the "State of Victoria" and shall be instituted and proceeded with in accordance with any procedure of the court specifically applicable thereto or, if no procedure is specifically applicable thereto, as nearly as possible in accordance with the procedure applicable to proceedings between subject and subject.

23 Liability of the Crown in contract

No. 5874 s. 4.

- (1) Subject to this Part—
 - (a) the Crown shall be liable in respect of any contract made on its behalf in the same manner as a subject is liable in respect of his contracts; and

- (b) the Crown shall be liable for the torts of any servant or agent of the Crown or independent contractor employed by the Crown as nearly as possible in the same manner as a subject is liable for the torts of his servant or agent or of an independent contractor employed by him.
- (2) No proceeding shall lie against the Crown under this Part in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibility of a judicial nature invested in him.
- (3) No proceeding shall lie against the Crown under this Part—
- (a) in respect of any contract made by or on behalf of any public statutory corporation; or
 - (b) in respect of any tort of any such corporation or of any of its servants or agents or of any independent contractor employed by it—

and nothing in this Part shall affect any provision in any Act by which any liability of any such corporation or of any of its members officers or servants in respect of any matter is specifically limited or conditioned, but no such corporation shall on the ground that it is the Crown or the servant or agent of the Crown be exempt from any liability to which it would otherwise be subject.

No. 5874 s. 5.

24 Proceedings by Crown

Any right or claim which the Crown may have against any person may be enforced by a proceeding under this Part or in any appropriate matter under Part I of this Act.

25 Rights of parties

No. 5874 s. 6.

In any proceeding under this Part in which the State of Victoria is a party the rights of parties shall as nearly as possible be the same and judgment may be given and costs awarded on either side and every judgment order or decree shall be subject to the same rights of re-hearing appeal and review, as in a proceeding between subject and subject.

26 Certificate for payment of judgment by Crown

No. 5874 s. 7.

- (1) Except as is provided in this section, no execution or attachment or process in the nature thereof shall be issued against the Crown out of any court in any proceeding under this Part; but after any judgment order or decree has been given pronounced or entered against the Crown in any such proceeding the proper officer of the court shall give to the party in whose favour it was so given pronounced or entered a certificate setting out the sum awarded against the Crown in the proceeding, whether as damages or otherwise or for costs, and the other particulars in respect of which compliance by the Crown is directed by the judgment order or decree.
- (2) On the receipt of such certificate it shall be lawful for the Governor to cause to be paid out of the Consolidated Fund (which is hereby to the necessary extent appropriated accordingly) the sum set out in the certificate and also to cause compliance to be made with the other particulars set out therein.

S. 26(2)
amended by
No. 57/1989
s. 3(Sch. item
48.30).

Crown Proceedings Act 1958
No. 6232 of 1958
Part II—Civil Proceedings by and Against the Crown

s. 27

No. 5874
s. 8(1).

27 Scope of this Part

The provisions of this Part shall take effect notwithstanding anything to the contrary in any Act or enactment or in any rule of law practice or procedure.

SCHEDULES

FIRST SCHEDULE

Section 2.

<i>Number of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
3665	Crown Remedies and Liability Act 1928	So much as is not already repealed
5874	Crown Proceedings Act 1955	The whole

SECOND SCHEDULE

Section 4.

This is to certify to the Attorney-General that at the _____ this day holden 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 fine is duly and truly set forth in the same schedule.

THE SCHEDULE

<i>Proper Full Name</i>	<i>Place of Abode or Business</i>	<i>Cause of Fine</i>	<i>Amount</i>	
			\$	c
		Behaving and conducting himself in a disorderly manner in court		
Total			\$	

Given under my hand this _____ day of _____ 19____
Judge.

Sch. 3

Section 4.
Sch. 3
amended by
Nos 9019
s. 2(1)(Sch.
item 49),
57/1989 s. 3
(Sch. item
48.31).

THIRD SCHEDULE

Victoria (to wit) Be it remembered That F.W.E. Esquire Attorney-General of our Lady the Queen for and on behalf of our said Lady the Queen gives the court here to understand and be informed that at the County Court holden at _____ on the _____ day of _____ before J.G.F. Esquire a fine of _____ dollars was imposed and inflicted upon A.B. for that he the said A.B. [behaved and conducted himself in a disorderly manner in the said court *or as the case may be*] as by the certificate of the said J.G.F. now filed of record appears. Therefore on the _____ day of _____ it is considered by the court here that our said Lady the Queen do recover against the said A.B. the said sum of _____ and also the sum of \$10³ for costs making together the sum of _____

Sch. 4
repealed by
No. 9008
s. 2(1)(Sch.
item 3(c)).

* * * * *

Schs 5, 6
substituted by
No. 7900 s. 5,
repealed by
No. 9008
s. 2(1)(Sch.
item 3(c)).

* * * * *

SEVENTH SCHEDULE

Section 7.

In the Supreme Court.

The Queen *against* A.B. of etc. and C.D. of etc.

Let a writ of Capias ad Respondendum issue in this suit to hold to bail for _____ dollars with an indorsement thereon [*not*] to arrest the above-named A.B. [*or as the case may be*].

Dated this _____ day of _____ 19 _____ .

F.W.E.
Attorney-General.

EIGHTH SCHEDULE

Section 10.

In the Supreme Court.

The _____ day of _____ in the year of our Lord Victoria (to wit) F.W.E. Esquire Attorney-General of our Lady the Queen for and on behalf of our said Lady the Queen sues E.F. and G.H. who have been arrested to answer our said Lady the Queen by a writ issued on the _____ day of _____

And also for etc. [*proceed as usual with the second and subsequent paragraphs if any*] And our said Lady the Queen claims _____ dollars [*or if the suit is to recover specific goods*] a return of the said goods or their value and _____ dollars for their detention.

Sch. 9

Section 16.

NINTH SCHEDULE⁴

No.

Elizabeth the Second, by the Grace of God of the United Kingdom, Australia, and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith. To the Sheriff:

Greeting We command you that you take C.D. if he shall be found in _____ and him safely keep so that you may have his body before our Supreme Court at Melbourne immediately after the execution hereof to satisfy us _____ dollars which lately in our said court we recovered against the said C.D. whereof the said C.D. is convicted together with the sum of _____ for interest upon the said sum at the rate of \$16 for every \$200 by the year until this day. And we do further command you that of the real and personal estate of the said C.D. in _____ you cause to be made the said sums and have the same before our said court immediately after the execution hereof to be rendered to us and in what you shall have executed this writ make appear to our said court immediately after the execution hereof and have there then this writ. Witness G.H. _____ at Melbourne this _____ day of _____ in the year of Our Lord One thousand nine hundred and _____

[To be indorsed.]

Levy [the whole or \$ _____] beside sheriff's poundage officer's fees and other incidental expenses.

When the full amount is levied the defendant may be discharged without further authority but if the full amount is not levied the defendant can only be discharged by the court or the judge or by the written authority of the Attorney-General.

The defendant is a _____ and resides at _____

ENDNOTES

1. General Information

The **Crown Proceedings Act 1958** was assented to on 30 September 1958 and came into operation on 1 April 1959: Government Gazette 18 March 1959 page 892.

2. Table of Amendments

This Version incorporates amendments made to the **Crown Proceedings Act 1958** by Acts and subordinate instruments.

Crown Proceedings (Forfeited Recognisances) Act 1969, No. 7900/1969

Assent Date: 9.12.69
Commencement Date: 1.9.70: Government Gazette 26.8.70 p. 2913
Current State: All of Act in operation

Crown Proceedings (Forfeited Recognisances) Act 1971, No. 8124/1971

Assent Date: 4.5.71
Commencement Date: 1.6.72: Government Gazette 22.3.72 p. 772
Current State: All of Act in operation

Magistrates (Summary Proceedings) Act 1975, No. 8731/1975

Assent Date: 16.5.75
Commencement Date: S. 173 on 1.7.76: Government Gazette 24.3.76 p. 848
Current State: This information relates only to the provision/s amending the **Crown Proceedings Act 1958**

Bail Act 1977, No. 9008/1977

Assent Date: 10.5.77
Commencement Date: 1.9.77: Government Gazette 17.8.77 p. 2654
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77: subject to s. 2(2)
Current State: All of Act in operation

Bail (Amendment) Act 1978, No. 9158/1978

Assent Date: 30.5.78
Commencement Date: 1.10.78: Government Gazette 6.9.78 p. 2869
Current State: All of Act in operation

Director of Public Prosecutions Act 1982, No. 9848/1982

Assent Date: 21.12.82
Commencement Date: Ss 1–8, 17 on 12.1.83: Government Gazette 12.1.83 p. 80; rest of Act on 1.6.83: Government Gazette 11.5.83 p. 1146
Current State: All of Act in operation

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: Ss 1–11, 13–27, 29–34 on 1.7.86: Government Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government Gazette 7.10.87 p. 2701
Current State: All of Act in operation

Crown Proceedings Act 1958
No. 6232 of 1958

Endnotes

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989
(as amended by No. 34/1990)

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 20) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Crown Proceedings Act 1958**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 32) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crown Proceedings Act 1958**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 31) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Crown Proceedings Act 1958**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 42) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Crown Proceedings Act 1958**

Endnotes

3. Explanatory Details

¹ S. 4: Refer to section 5 to the **Decimal Currency Act 1965**, No. 7315/1965.

² S. 5(6)–5(9):

S. 5(6)(7) repealed by No. 9008 s. 2(1)(Sch. item 3(a)(iv)).

S. 5(7A) inserted by No. 8124 s. 4(4), repealed by No. 9008 s. 2(1)(Sch. item 3(a)(iv)).

S. 5(8)(9) repealed by No. 9008 s. 2(1)(Sch. item 3(a)(iv)).

³ Sch. 3: See note 1.

⁴ Sch. 9: See note 1.