



**Tuvalu**

# **CROWN PROCEEDINGS ACT**

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**CAP. 7.12**





Tuvalu

## CROWN PROCEEDINGS ACT

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Tuvalu

## CROWN PROCEEDINGS ACT

**AN ACT TO AMEND THE LAW RELATING TO THE CIVIL LIABILITIES OF THE CROWN AND TO CIVIL PROCEEDINGS BY AND AGAINST THE CROWN, TO AMEND THE LAW RELATING TO THE CIVIL LIABILITIES OF PERSONS OTHER THAN THE CROWN IN CERTAIN CASES INVOLVING THE AFFAIRS OR PROPERTY OF THE CROWN AND FOR MATTERS CONNECTED WITH THE MATTERS AFORESAID<sup>1</sup>**

Commencement [30th August 1974]

### PART I - PRELIMINARY

#### 1 Short title

This Act may be cited as the Crown Proceedings Act.

#### 2 Interpretation<sup>2</sup>

- (1) Any reference in this Act to the provisions of this Act shall unless the context otherwise requires include a reference to rules of court made for the purposes of this Act.
- (2) In this Act unless the context otherwise requires —
  - “**agent**” when used in relation to the Crown includes an independent contractor employed by the Crown;
  - “**civil proceedings**” includes proceedings in the High Court or magistrate's courts for the recovery of fines and penalties but does not include proceedings of a nature such as in England are taken on the Crown side of the Queen's Bench Division of His Majesty's High Court of Justice;

“**Government vessel**” means any vessel of which the beneficial interest is vested in His Majesty in right of His Majesty's Government in Tuvalu or which is for the time being demised or sub demised to or in the exclusive possession of His Majesty in that right;

“**officer**” in relation to the Crown includes any public officer;

“**order**” includes a judgment, decree, rule, award or declaration;

“**prescribed**” means prescribed by rules of court;

“**proceedings against the Crown**” includes any claim by way of set-off or counterclaim raised in proceedings by the Crown;

“**rules of court**” means rules made by the authority having for the time being the power to make rules and orders regulating the practice and procedure of the High Court or magistrate's courts as the case may be;

“**statutory duty**” means any duty imposed by or under any written law.

- (3) Any reference in Part IV or Part V to civil proceedings by or against the Crown or to civil proceedings to which the Crown is party shall be construed as including a reference to civil proceedings to which the Attorney-General or any Government department or any public officer as such is a party:

Provided that the Crown shall not for the purposes of Part IV or Part V be deemed to be party to any proceedings by reason only that they are brought by the Attorney-General upon the relation of some other person.

## PART II - SUBSTANTIVE LAW

### 3 Right to sue the Crown

Where any person has a claim against the Crown after the commencement of this Act and if this Act had not been enacted the claim might have been enforced subject to the grant of the Governor-General's fiat by petition of right or might have been enforced by a proceeding provided by any statutory provisions ceasing to have effect in Tuvalu by virtue of this Act then subject to the provisions of this Act the claim may be enforced as of right and without the fiat of the Governor-General by proceedings taken against the Crown for that purpose in accordance with the provisions of this Act.

### 4 Liability of the Crown in tort

- (1) Subject to the provisions of this Act the Crown shall be subject to all those liabilities in tort to which if it were a private person of full age and capacity it would be subject —
- (a) in respect of torts committed by its servants or agents;

- (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:

Provided that no proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or agent or his estate.

- (2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers then subject to the provisions of this Act the Crown shall in respect of a failure to comply with that duty be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.
- (3) Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by any written law and that officer commits any tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.
- (4) Any written law which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall in the case of proceedings against the Crown under this section in respect of a tort committed by that department or officer apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.
- (5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

## **5 Provisions as to industrial property**

- (1) Where after the commencement of this Act any servant or agent of the Crown infringes a patent or infringes a registered trade mark or infringes any copyright (including any copyright in a design subsisting under the Registered Designs Acts 1949 to 1961 of the United Kingdom as applied to Tuvalu by the United Kingdom Designs Protection Act)<sup>3</sup> and the infringement is committed with the authority of the Crown then subject to the provisions of

this Act civil proceedings in respect of such infringement shall lie against the Crown.

- (2) Nothing in subsection (1) or in any other provision of this Act shall affect the rights of any Government department under section 46 of the Patents Act 1949 or section 12 of and the First Schedule to the Registered Designs Act 1949 of the United Kingdom.
- (3) Save as is expressly provided by this section no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of a patent, in respect of the infringement of a registered trade mark or in respect of the infringement of any such copyright as is mentioned in subsection (1).

## **6 Application of law as to indemnity, contribution, joint and several tortfeasors, and contributory negligence**

- (1) Where the Crown is subject to any liability by virtue of this Part the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of the liability to which it is so subject as if the Crown were a person of full age and capacity.
- (2) Without prejudice to the effect of subsection (1), Part II of the Law Reform (Married Women and Tortfeasors) Act 1935 (which relates to proceedings against and contribution between joint and several tortfeasors) shall bind the Crown.
- (3) Without prejudice to the general effect of section 3, the Law Reform (Contributory Negligence) Act 1945 (which amends the law relating to contributory negligence) shall bind the Crown.

## **7 Liability in respect of Government vessels**

The provisions of the Merchant Shipping Act<sup>4</sup>, or regulations made under that Act which limit the amount of the liability of the owners of ships or which negative such liability shall with any necessary modifications apply for the purpose of limiting or negating, as the case may be, the liability of the Crown in respect of vessels owned by the Crown; and any provision of that Act or those regulations which relates to or is ancillary to or consequential on the provisions so applied shall have effect accordingly.

## **8 Liability in connection with postal articles**

- (1) Subject as hereinafter provided no proceedings in tort shall lie against the Crown for anything done or omitted to be done in relation to a postal article by any person while employed as a servant or agent of the Crown or for anything done or omitted to be done in relation to any telephonic communication by any person while so employed; nor shall any public officer

be subject except at the suit of the Crown to any civil liability for any of the matters aforesaid.

- (2) Proceedings shall lie against the Crown under this subsection in respect of loss of or damage to a registered inland postal article in so far as the loss or damage is due to any wrongful act done or any neglect or default committed by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, deliver or other dealing with the article:

Provided that —

- (a) no proceedings shall lie under this subsection in respect of any postal article registered before the commencement of this Act;
- (b) the amount recoverable in any proceedings under this subsection shall not exceed the market value of the postal article in question (excluding the market value of any message or information which it bears) at the time when the cause of action arises;
- (c) the amount recoverable in any such proceedings shall not in any event exceed the maximum amount which under the Post Office Act<sup>5</sup> is available for compensating the persons aggrieved having regard to the fee paid in respect of the registration of the article; and
- (d) the Crown shall not be liable under this subsection in respect of any postal article unless such conditions as are prescribed by the Post Office Act in relation to registered inland postal articles have been complied with in relation to that article.

For the purposes of any proceedings under this subsection it shall be presumed until the contrary be shown on behalf of the Crown that the loss of or damage to the postal article was due to some wrongful act done or some neglect or default committed by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the article.

- (3) No relief shall be available under subsection (2) except upon a claim by the sender or addressee of the postal article in question; and the sender or addressee of the article shall be entitled to claim any relief available under the said subsection in respect of the article whether or not he is the person damnified by the injury complained of and to give a good discharge in respect of all claims in respect of the article under the said subsection:

Provided that where the court is satisfied upon an application by any person who is not the sender or addressee of the article that the sender and the addressee are unable or unwilling to enforce their remedies in respect of the article under the said subsection the court may upon such terms as to security for costs or otherwise as the court thinks just allow that other person to bring proceedings under the said subsection in the name of the sender or addressee of the article.

Any reference in this subsection to the sender or addressee of the postal article includes a reference to his personal representatives.

- (4) Where by virtue of subsection (3) any person recovers any money or property which apart from that subsection would have been recoverable by some other person, the money or property so recovered shall be held on trust for that person.
- (5) Regulations may be made under section 36 of the Post Office Act for prescribing the conditions to be observed for the purpose of this section in relation to registered inland postal articles.
- (6) In this section —  
“**postal article**” has the meaning assigned to “**postal packet**” by section 2 of the Post Office Act but does not include a telegram or radio-telegram;  
“**inland postal article**” means any article which is posted in Tuvalu for delivery in Tuvalu to the person to whom it is addressed.
- (7) Any reference in this section to a postal article shall be construed as including a reference to the wrapping or container thereof, and the contents therein.

## 9 Provisions relating to the armed forces

- (1) Nothing done or omitted to be done by a member of the armed forces of the Crown while on duty as such shall subject either him or the Crown to liability in tort for causing the death of another person or for causing personal injury to another person in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Crown if —
  - (a) at the time when that thing is suffered by that other person he is either on duty as a member of the armed forces of the Crown or is though not on duty as such on any land, premises, vessel, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown; and
  - (b)
    - (i) where that other person is a member of the armed forces of the Crown in right of His Majesty's Government in the United Kingdom the Minister responsible for the administration of pensions in the United Kingdom certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award under the Royal Warrant, Order in Council or Order of His Majesty relating to the disablement or death of members of the force of which he is a member;
    - (ii) where that other person is a member of the armed forces of the Crown in right of His Majesty's Government in Tuvalu the Governor-General certifies that his suffering that thing has been

or will be treated as attributable to service for the purposes of entitlement to a gratuity or pension under any written law relating to the disablement or death of members of the force of which he is a member:

Provided that this subsection shall not exempt a member of the said forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

- (2) No proceedings in tort shall lie against the Crown for death or personal injury due to anything suffered by a member of the armed forces of the Crown if —
- (a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, vessel, aircraft or vehicle as aforesaid or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and
  - (b)
    - (i) in the case of a member of the armed forces of the Crown in right of His Majesty's Government in the United Kingdom, the Minister responsible for the administration of pensions in the United Kingdom certifies as mentioned in subsection (1);
    - (ii) in the case of a member of the armed forces of the Crown in right of His Majesty's Government in Tuvalu the Governor-General certifies as mentioned in subsection (1),

nor shall any act or omission of an officer of the Crown subject him to liability in tort for death or personal injury in so far as the death or the personal injury is due to anything suffered by a member of the armed forces of the Crown being a thing as to which the conditions aforesaid are satisfied.

- (3) The Governor-General if satisfied that it is the fact —
- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of His Majesty's Government in Tuvalu; or
  - (b) that at any particular time any land, premises, vessel, aircraft, vehicle, equipment or supplies was or was not or were or were not used for the purposes of the said forces,

may issue a certificate certifying that to be the fact and any such certificate shall for the purposes of this section be conclusive as to the fact which it certifies.

- (4) A certificate of the Ministry of Defence or the Secretary of State —
- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown in right of His Majesty's Government in the United Kingdom; or

- (b) that at any particular time any land, premises, vessel, aircraft, vehicle, equipment or supplies was or was not or were or were not used for the purposes of the said forces,

shall for the purposes of this section be conclusive as to the fact which it certifies.

- (5) For the purposes of this section, “member of the armed forces of the Crown” unless the context otherwise requires means a member of the armed forces of the Crown in right of His Majesty's Government in Tuvalu or in right of His Majesty's Government in the United Kingdom.
- (6) Nothing in this section shall be deemed by implication or otherwise to confer any right of action against the Crown in right of His Majesty's Government in the United Kingdom.

## **10 Saving in respect of acts done under prerogative and statutory powers**

- (1) Nothing in this Part shall extinguish or abridge any powers or authorities which if this Act had not been enacted would have been exercisable by virtue of the prerogative of the Crown or any powers or authorities conferred on the Crown or on the Governor-General by any statute or written law and in particular nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the Crown whether in time of peace or of war for the purpose of the defence of the realm or of training or maintaining the efficiency of any of the armed forces of the Crown in right of His Majesty's government in the United Kingdom or in Tuvalu.
- (2) Where in any proceedings under this Act it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Crown the Governor-General in his discretion may if satisfied that the act or omission was necessary for any such purpose as is mentioned in subsection (1) issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall in those proceedings be conclusive as to the matter so certified.

## **PART III - JURISDICTION AND PROCEDURE**

### **11 Civil proceedings in the High Court**

Subject to the provisions of this Act all such civil proceedings by or against the Crown as are mentioned in Schedule 1 are hereby abolished and all civil proceedings by or against the Crown in the High Court shall be instituted and proceeded with in accordance with rules of court applicable to that court.

**12 Civil proceedings in magistrate's courts and lands courts**

- (1) Subject to the provisions of this Act and to any written law limiting the jurisdiction of magistrate's courts (whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise) any civil proceedings by or against the Crown may be instituted in a magistrate's court.<sup>6</sup>
- (2) Any proceedings by or against the Crown in a magistrate's court shall be instituted and proceeded with in accordance with rules of court applicable to such court.<sup>7</sup>

**13 *Repealed***<sup>8</sup>**14 Interpleader**

The Crown may obtain relief by way of interpleader proceedings and may be made a party to such proceedings in the same manner in which a subject may obtain relief by way of such proceedings or be made a party thereto; and all rules of court relating to interpleader proceedings shall subject to the provisions of this Act have effect accordingly.

**15 Parties to proceedings**

- (1) Except where otherwise expressly provided by some other written law civil proceedings by or against the Crown instituted under the provisions of this Act shall be instituted by or against the Attorney-General.
- (2) No proceedings instituted in accordance with this Part by or against the Attorney-General shall abate or be affected by any change in the person holding the office of Attorney-General.

**16 Service of documents**

All documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall be served upon the Attorney-General or upon such other public officer or Government department as may by any written law be expressly authorised to institute or defend the proceedings in question on behalf of the Crown.

**17 Removal and transfer of proceedings**

- (1) If in a case where proceedings are instituted against the Crown in a magistrate's court or in the Senior Magistrate's Court an application in that behalf is made by the Crown to the High Court and there is produced to the High Court a certificate of the Attorney-General to the effect that the

proceedings may involve an important question of law or may be decisive of other cases arising out of the same matter or are for other reasons more fit to be tried in the High Court the proceedings shall be removed into the High Court.

- (2) Subsection (1) shall also apply in a case where proceedings are instituted against the Crown in a magistrate's court as if a reference to the High Court were a reference to the Senior Magistrate's Court.
- (3) Where any proceedings have been removed into the High Court or the Senior Magistrate's Court pursuant to subsection (1) or (2) and it appears to that court that the removal has occasioned additional expense to the person by whom the proceedings are brought that court may take account of the additional expense so occasioned in exercising its powers in regard to the award of costs.
- (4) Without prejudice to the rights of the Crown under subsection (1) all written laws relating to the removal or transfer of proceedings between magistrate's courts, the Senior Magistrate's Court and the High Court shall apply in relation to proceedings against the Crown:

Provided that an order for the transfer to a magistrate's court or the Senior Magistrate's Court of any proceedings against the Crown in the High Court shall not be made without the consent of the Crown.<sup>9</sup>

## 18 Nature of relief

- (1) In any civil proceedings by or against the Crown the court shall subject to the provisions of this Act have power to make all such orders as it has power to make in proceedings between subjects and otherwise to give such appropriate relief as the case may require:

Provided that —

- (a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance the Court shall not grant an injunction or make an order for specific performance but may in lieu thereof make an order declaratory of the rights of the parties; and
  - (b) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.
- (2) The court shall not in any civil proceedings grant any injunction or make any order against any officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

## **19 Costs in civil proceedings to which the Crown is a party**

In any civil proceedings or arbitration to which the Crown is a party the costs of and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between subjects and the court or arbitrator shall have power to make an order for the payment of costs by or to the Crown accordingly:

Provided that —

- (a) in the case of proceedings to which by reason of any written law or otherwise the Attorney-General is authorised to be made a party the court or arbitrator shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney-General appears and may in the exercise of its or his discretion order any other party to the proceedings to pay the costs of the Attorney-General whatever may be the result of the proceedings; and
- (b) nothing in this section shall affect the power of the court or arbitrator to order or any written law providing for the payment of costs out of any particular fund or property or any written law expressly relieving any Government department or officer of the Crown of the liability to pay costs.

## **20 Appeals and stay of execution**

Subject to the provisions of this Act all rules of court and other written law relating to appeals and stay of execution shall with any necessary modifications apply to civil proceedings by or against the Crown as they apply to proceedings between subjects.

## **21 Scope of Part III**

- (1) Subject to the provisions of this section any reference in this Part to civil proceedings by the Crown shall be construed as a reference to the following proceedings only —
  - (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which if this Act had not been enacted might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 1 of Schedule 1;
  - (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which if this Act had not been enacted might have been enforced or vindicated or obtained by an action at the suit of any Government department or any officer of the Crown as such;
  - (c) all such proceedings as the Crown is entitled to bring by virtue of this Act,

and the expression “civil proceedings by or against the Crown” shall be construed accordingly.

- (2) Subject to the provisions of this section, any reference in this Part to civil proceedings against the Crown shall be construed as a reference to the following proceedings only —
- (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which if this Act had not been enacted might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 2 of Schedule 1;
  - (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which if this Act had not been enacted might have been enforced or vindicated or obtained by any action against the Attorney-General, any Government department or any officer of the Crown as such;
  - (c) all such proceedings as any person is entitled to bring against the Crown by virtue of this Act,
- and the expression “civil proceedings by or against the Crown” shall be construed accordingly.
- (3) Notwithstanding anything contained in subsections (1) and (2) the provisions of this Part shall not have effect with respect to any of the following proceedings, that is to say —
- (a) proceedings brought by the Attorney-General on the relation of some other person;
  - (b) proceedings relating to charitable trusts by or against the Attorney-General.

## **PART IV - JUDGMENTS AND EXECUTION**

### **22 Interest on debts, damages and costs**

- (1) The provisions of any written law relating to the payment of interest on judgment debts in proceedings between subjects shall apply to judgment debts due from or to the Crown.
- (2) Where any costs are awarded to or against the Crown in the High Court interest shall be payable on those costs unless the Court otherwise orders and any interest so payable shall be at the same rate as that at which interest is payable upon judgment debts due from or to the Crown.
- (3) The provisions of any written law empowering a court to award interest on debts and damages shall apply to judgments given in proceedings by or against the Crown.
- (4) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

## 23 Satisfaction of orders against the Crown

- (1) Where in any civil proceedings by or against the Crown or in any proceedings such as in England are taken on the Crown side of the Queen's Bench Division of His Majesty's High Court of Justice, or in connection with any arbitration to which the Crown is a party any order (including an order for costs) is made by any court in favour of any person against the Crown or against a Government department or against an officer of the Crown as such the proper officer of the court shall on an application in that behalf made by or on behalf of that person at any time after the expiration of 21 days from the date of the order or in case the order provides for the payment of costs and the costs require to be taxed at any time after the costs have been taxed, whichever is the later, issue to that person a certificate containing particulars of the order:

Provided that, if the court so directs a separate certificate shall be issued in respect of the costs if any ordered to be paid to the applicant.

- (2) A copy of any certificate issued under this section may be served by or on behalf of the person in whose favour the order is made upon the Attorney-General.
- (3) If the order provides for the payment of any money by way of damages or otherwise or of any costs the certificate shall state the amount so payable and the accounting officer shall subject as hereinafter provided pay to the person entitled or to his duly authorised representative, if any, the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that pending an appeal or otherwise payment of the whole of any amount so payable or any part thereof shall be suspended and if the certificate has not been issued may order any such directions to be inserted therein.

- (4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs as aforesaid and no person shall be individually liable under any order for the payment by the Crown or any Government department or any officer of the Crown as such of any such money or costs.
- (5) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

## 24 Execution by the Crown

- (1) Subject to the provisions of this Act any order made in favour of the Crown against any person in any civil proceedings to which the Crown is a party may be enforced in the same manner as an order made in an action between subjects and not otherwise.

- (2) Nothing in this section shall affect any procedure which immediately before the commencement of this Act was available for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the recovery of any fine or penalty or the forfeiture or condemnation of any goods or the forfeiture of any vessel or any share in any vessel.
- (3) Subsection (1) shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

## **25 Attachment of moneys payable by the Crown**

- (1) Where any money is payable by the Crown to some person who under any order of any court is liable to pay any money to any other person and that other person would if the money so payable by the Crown were money payable by a subject be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due or an order for the appointment of a sequestrator or receiver to receive the money on his behalf the High Court may subject to the provisions of this Act and in accordance with rules of court make an order restraining the first mentioned person from receiving that money and directing payment thereof to that other person or to the sequestrator or receiver:

Provided that no such order shall be made in respect of —

- (a) any wages or salary payable to any officer of the Crown as such;
  - (b) any money which is subject to the provisions of any written law prohibiting or restricting assignment or charging or taking in execution.
- (2) The provisions of subsection (1) shall so far as they relate to forms of relief falling within the jurisdiction of a magistrate's court have effect in relation to that court as they have effect in relation to the High Court.

## **PART V - MISCELLANEOUS AND SUPPLEMENTAL**

### **26 Discovery**

- (1) Subject to and in accordance with rules of court —
  - (a) in any civil proceedings in the High Court or a magistrate's court to which the Crown is a party the Crown may be required by the court to make discovery of documents and produce documents for inspection;<sup>10</sup> and
  - (b) in any such proceedings as aforesaid, the Crown may be required by the court to answer interrogatories:

Provided that this section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to

answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

- (2) Any order of the court made under the powers conferred by subsection (1) (b) shall direct by what officer of the Crown the interrogatories are to be answered.
- (3) Without prejudice to the proviso to subsection (1) any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if in the opinion of the Minister it would be injurious to the public interest to disclose the existence thereof.

## **27 Exclusion of proceedings *in rem* against the Crown**

- (1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the Crown or the arrest, detention or sale of any vessel, aircraft, cargo or other property belonging to the Crown or give to any person any lien on any such vessel, aircraft, cargo or other property.
- (2) Where proceedings *in rem* have been instituted in any court against any vessel, aircraft, cargo or other property belonging to the Crown the court may if satisfied either on an application by the plaintiff for an order under this subsection or an application by the Crown to set aside the proceedings that the proceedings were so instituted by the plaintiff in the reasonable belief that the vessel, aircraft, cargo or other property did not belong to the Crown order that the proceedings shall be treated as if they were *in personam* duly instituted against the Crown in accordance with the provisions of this Act or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances and that the proceedings shall continue accordingly; and any such order may be made upon such terms, if any, as the court thinks just and where the court makes any such order the court may make such consequential orders as the court may think expedient.

## **28 Limitation of actions**

Nothing in this Act shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against public authorities.

## **29 Application to the Crown of certain written laws**

- (1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of any written law although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any written law which could if the proceedings were between subjects be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may subject to any express provision to the contrary be so relied upon by the Crown.

- (2) Any rules of court which empower the court to order a defendant who is about to leave the jurisdiction of the court to furnish security shall with any necessary modifications apply to civil proceedings by the Crown.

### **30 No abatement on demise of the Crown**

No claim by or against the Crown and no proceedings for the enforcement of any such claim shall abate or be affected by the demise of the Crown.

### **31 Abolition of certain writs**

No writ of extent or of *diem clausit extremum* shall issue after the commencement of this Act.

### **32 Rules of court**

- (1) Any power to make rules of court shall include power to make rules for the purpose of giving effect to the provisions of this Act and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.
- (2) Provision shall be made by rules of court with respect to the following matters —
- (a) for providing for service of process or notice thereof in the case of proceedings by the Crown against persons whether citizens of Tuvalu or not who are not resident in Tuvalu;
  - (b) for securing that where any civil proceedings are brought against the Crown in accordance with the provisions of this Act the plaintiff shall before the Crown is required to take any step in the proceeding provide the Crown with such information as the Crown may reasonably require as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned;
  - (c) for providing that in the case of proceedings against the Crown the plaintiff shall not enter judgment against the Crown in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown;
  - (d) for excepting proceedings brought against the Crown from the operation of any rule of court providing for summary judgment without trial;
  - (e) for enabling evidence to be taken on commission in proceedings by or against the Crown;
  - (f) for providing —

- (i) that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties or penalties or to avail himself in proceedings of any other nature by the Crown of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties;
  - (ii) that a person shall not be entitled without the leave of the court to avail himself of any set-off or counterclaim in any proceedings by the Crown if either the subject matter of the set-off or counterclaim does not relate to the Government department in the name of which the proceedings are brought or the proceedings are brought in the name of the Attorney-General;
  - (iii) that the Crown when sued in the name of a Government department shall not without the leave of the court be entitled to avail itself of any set-off or counterclaim if the subject matter does not relate to that department; and
  - (iv) that the Crown when sued in the name of the Attorney-General shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.
- (3) Provision may be made by rules of court for regulating any appeals to the High Court whether by way of case stated or otherwise under written laws relating to revenue.

### **33 Pending proceedings**

Save as otherwise expressly provided the provisions of this Act shall not affect proceedings by or against the Crown which have been instituted before the commencement of this Act; and for the purposes of this section proceedings against the Crown by petition of right shall be deemed to have been so instituted if a petition of right with respect to the matter in question has been filed for submission to the Governor before the commencement of this Act.

### **34 Financial provisions**

- (1) Any expenditure incurred by or on behalf of the Crown in right of His Majesty's Government in Tuvalu by reason of the enactment of this Act shall be defrayed out of the general revenue of Tuvalu.
- (2) Any sums payable to the Crown by reason of the enactment of this Act shall be paid into the Consolidated Fund.

### 35 Statutes ceasing to apply

The Acts of the United Kingdom set out in Schedule 2 shall cease to apply to Tuvalu to the extent specified in column (c) of that Schedule.

### 36 Savings

- (1) Nothing in this Act shall apply to proceedings by or against or authorise proceedings in tort to be brought against His Majesty in His private capacity.
- (2) Except as therein otherwise expressly provided nothing in this Act shall —
  - (a) affect the law relating to prize salvage or apply to proceedings in causes or matters within the jurisdiction of any court as a prize court or to any criminal proceedings;
  - (b) authorise proceedings to be taken against the Crown under or in accordance with the provisions of this Act in respect of any alleged liability of the Crown arising otherwise than in respect of His Majesty's Government in Tuvalu or affect proceedings against the Crown in respect of any such alleged liability as aforesaid;
  - (c) affect any proceedings by the Crown otherwise than in right of His Majesty's Government in Tuvalu;
  - (d) subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject in respect of such acts or omissions if it were a private person;
  - (e) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any written law;
  - (f) affect any right of the Crown to demand a trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits; or
  - (g) affect any right of the Attorney-General, or any Government department or any officer of the Crown as such to institute proceedings under or in accordance with the provisions of any other written law,

and without prejudice to the general effect of the foregoing provisions Part IV shall not apply to the Crown except in right of His Majesty's Government in Tuvalu.

- (3) A certificate of the Minister —
  - (a) to the effect that any alleged liability of the Crown arises otherwise than in respect of His Majesty's Government in Tuvalu; or
  - (b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of His Majesty's Government in Tuvalu,shall for the purpose of this Act be conclusive as to the matter so certified.

- (4) Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or the intentions of the Crown the Crown shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liabilities of the Crown under this Act in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation thereof.
- (5) This Act shall not operate to limit the discretion of the High Court to grant relief by way of mandamus in cases in which such relief might have been granted before the commencement of this Act notwithstanding that by reason of the provisions of this Act some other and further remedy is available.

**SCHEDULE 1**

(Sections 11 and 21)

**PROCEEDINGS ABOLISHED BY THIS ACT**

1.
  - (1) Latin informations and English informations.
  - (2) Writs of *capias ad respondendum*, writs of *subpoena ad respondendum* and writs of appraisement.
  - (3) Writs of *scire facias*.
  - (4) Proceedings for the determination of any issue upon a writ of extent or of *diem clausit extremum*.
2.
  - (1) Proceedings against His Majesty by way of petition of right, including proceedings by way of petition of right under section 52 of the Naval Prize Act 1864.
  - (2) Proceedings against His Majesty by way of *monstrans de droit*.

**SCHEDULE 2**

(Section 35)

**STATUTES NO LONGER APPLYING IN TUVALU**

(a) Year and Chapter	(b) Title or Short Title	(c) Extent of Repeal
25 Edw. I. c. 18	The King's Tenant his Debtor	The whole Act
1785 c. 35	The Crown Debtors Act 1785	The whole Act
1817 c. 117	The Extents in Aid Act 1817	The whole Act
1842 c. 86	The Exchequer Court Act 1842	Section 9
1860 c. 34	The Petitions of Right Act 1860	The whole Act
1864 c. 25	The Naval Prize Act 1864	Section 52

**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 95 – Acts 11 of 1974, 1 of 1977, 11 of 1987

Amended by Act 9 of 2021 (commencement 3/6/22 by LN 26/2022 ); This amending Act contained a section that provided that orders, rulings, decisions, or judgments of a Lands Court concerning this Act, are saved, remain valid and continue in force; and likewise certain pending matters before a Lands Court continue for determination by the Magistrate’s Court or Senior Magistrate’s Court.

<sup>2</sup> Amended by Act 9 of 2021

<sup>3</sup> Cap. 40.68

<sup>4</sup> Cap. 48.28

<sup>5</sup> Cap. 32.04

<sup>6</sup> Amended by Act 9 of 2021

<sup>7</sup> Amended by Act 9 of 2021

<sup>8</sup> Repealed by Act 9 of 2021

<sup>9</sup> Amended by Act 9 of 2021

<sup>10</sup> Amended by Act 9 of 2021