

1901-2.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

Read 1° 25th September, 1902.

A BILL

FOR

AN ACT

To make temporary provision for enforcing claims against the Commonwealth.

BE it enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia as follows:—

1. This Act may be cited as the *Claims against the Commonwealth Act 1902*. Short title.

2. (1) Any person making any claim in contract or in tort against the Commonwealth may set out the particulars of the claim in a petition to the Governor-General praying him to appoint a nominal defendant on behalf of the Commonwealth in the matter of the claim. Appointment of nominal defendant. See N.S.W. 39 Vic. No. 38 sec. 2. Vic. No. 1080 sec. 20. Qu. 29 Vic. No. 23 sec. 2. S.A. 1853, No 6 secs. 1, 2. Tas. 55 Vic. No. 24 sec. 4.

(2) The Governor-General may if he thinks fit appoint any person to be a nominal defendant accordingly. Proceedings against nominal defendant. See N.S.W. ib. sec. 3. Qu. ib. sec. 5.

3. (1) The petitioner may in respect of the claim bring against the nominal defendant an action or suit at law or in equity in the Supreme Court of the State in which the claim arose.

(2) The rights of parties in the action or suit shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in an ordinary case between subject and subject.

4. The

Nominal defendant
not to be
individually liable
See N.S.W. ib.
sec. 4.

Vic. ib. sec. 24.
Qu. ib. sec. 6.
Tas. ib. sec. 10.

Satisfaction of
judgment.
See Vic. ib. sec. 25.
S.A. ib. sec. 6.
Tas. ib. sec. 11.

Supreme Courts
invested with
federal
jurisdiction.

Postponement of
appeal.

Duration of Act.

4. The nominal defendant shall not be individually liable in the action or suit in respect of his person or property, and no execution or attachment, or process in the nature thereof, shall issue against him.

5. The Governor-General may cause to be paid out of the Consolidated Revenue Fund, which is hereby appropriated for the purpose, the amount of any damages and costs awarded to the plaintiff, and may perform any decree or order made by the Court in the action or suit. 5

6. The Supreme Court of each State is hereby invested with 10 federal jurisdiction for the purpose of hearing and determining actions and suits brought under this Act, and shall have that jurisdiction as a Court invested with federal jurisdiction and not otherwise.

7. In any action or suit brought under this Act, any appeal, or 15 application for leave to appeal, from a decision of the Supreme Court of a State, which in the opinion of the Attorney-General involves a constitutional question, or a question of importance to the Commonwealth, shall on the application of the Attorney-General be postponed until a time not later than the date of expiration of this 20 Act.

8. This Act shall expire on the thirty-first day of December One thousand nine hundred and three.

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PROPOSED AMENDMENTS AND NEW CLAUSES IN THE
CLAIMS AGAINST THE COMMONWEALTH BILL.*Mr. Glynn—*

- Clause 1, line 4, after "claims" insert "by or."
 „ line 5, before "Act" insert "or a State."
 Clauses 2 and 3—Omit these clauses with a view of inserting suggested new clauses.
 Clause 6, line 11, after "Jurisdiction" insert "in respect of all matters specified in clauses 75 and 76 of the Constitution."
 „ lines 11 and 12, omit "for the purpose of hearing and determining actions and suits brought under this Act."
 Consequential amendment of title.

New Clauses to follow Clause 1—

A. Proceedings may be taken against the Commonwealth or a State in all matters in which were the claim against a subject damages might be recovered or relief granted.

B. The Commonwealth or a State may sue or proceed or be sued or proceeded against in the name of its Attorney-General or if there be none in the name of the Minister of State whose department is concerned.

C. The proceedings may be instituted or taken the rights of the parties shall be as nearly as possible the same, and judgment may be given and enforced relief granted remedies applied and costs awarded as in an ordinary action application or proceeding at law or in equity between persons.

D. No State shall be sued except in its own Supreme Court.

