



Australian Capital Territory

Contractors Debts Act 1897 No 29

Republication No 2

Republication date: 12 December 2001

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Contractors Debts Act 1897* as in force on 12 December 2001. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Contractors Debts Act 1897

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Amendments incorporated to
12 September 2001



Australian Capital Territory

Contractors Debts Act 1897

An Act to better secure the payment of debts owing to workers,
tradespeople and others

1 Name of Act

This Act is the *Contractors Debts Act 1897*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition '*contractee*—see section 4 (1).' means that the word 'contractee' is defined in section 4 (1) of this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

3 Certificate of cause of debt

- (1) This section applies if the Supreme Court or Magistrates Court finds in a proceeding that an amount is payable by a person (the *defendant*) for work done, or materials supplied, by someone else (the *plaintiff*) and the nature of the work or materials, and where the work was done or the materials supplied, appears from the evidence.
- (2) On application by the plaintiff, the court must give the plaintiff a certificate of the cause of debt.

Note If a form is approved under s 15 (Approved forms) for a certificate of cause of debt, the form must be used.

- (3) However, the court must not give a certificate for work done on a moveable chattel if it would be practicable for a person who does work on it to have a lien on it by retaining possession of it.
- (4) For this Act, a certificate under this section is conclusive evidence of the matters stated in it.

4 Payment of amount owed if defendant has contract with someone else

- (1) If an amount is, or may become, payable to the defendant (the **contractor**) under an express or implied contract with a third person (the **contractee**) in relation to the work done, or materials supplied, by the plaintiff (or part of or incidental to the work or materials), the plaintiff (if the plaintiff is owed an amount for materials, called the **tradesperson** and, in any other case, called the **worker**) may obtain payment of the amount mentioned in the certificate of the cause of debt (the **amount of the debt**) by serving on the contractee a notice in writing of the debt, together with a copy of the certificate.

Note If a form is approved under s 15 (Approved forms) for a notice of debt or certificate of discharge, the form must be used.

- (2) On service of the notice and copy of the certificate on the contractee, any amount that is or becomes payable to the contractor by the contractee under the contract is, to the amount of the debt, taken to have been assigned by the contractor to the worker or tradesperson.
- (3) The contractee must satisfy the amount of the debt by paying to the worker or tradesperson any amount that is or becomes payable to the contractor by the contractee under the contract.
- (4) However, the obligation to make payments to the worker or tradesperson does not begin until 7 days after service of the notice and ends when the contractee is shown a certificate of discharge for the debt and given a copy of the certificate.

5 Priority of assignments

- (1) The assignment to the worker or tradesperson is subject to any earlier assignment under this Act that is binding on the contractor and contractee at the time of service of the notice of debt on the contractee.
- (2) However, if 2 or more notices of debt are served by different people on the contractor under this Act in relation to the contractee within a

period of 7 days, the notices are taken to have been served at the same time.

- (3) If notices are taken to have been served at the same time, payments of amounts owing to the contractor must be distributed among the people taken to have served a notice of debt on the contractee at the same time in proportion to the amounts mentioned in their notices of debt until the amounts are paid.

6 Recovery of amount assigned

- (1) If the contractee fails to pay the amount of the debt in accordance with this Act, the worker or tradesperson may sue for and recover, in the worker or tradesperson's own name, the amount assigned by any proceeding the contractor could have taken against the contractee if there had been no assignment under this Act.
- (2) In the proceeding, the contractee may raise any defence that would have been available against the contractor if there had been no assignment under this Act, other than a defence based on anything done by the contractee after service of the notice of debt on the contractee.

7 Assignment ceases to operate on satisfaction of debt etc

- (1) All or part of the assignment under this Act of the amount of the debt ceases to operate if—
 - (a) the debt is satisfied, in whole or in part, other than in accordance with this Act; or
 - (b) the judgment or order for which the certificate of debt was given is set aside.
- (2) However, subsection (1) does not prejudice any honest payment or other dealing by the contractee on the basis of the assignment and the assignment continues in force to the extent necessary to support the payment or dealing if the contractee made the payment or engaged in the dealing before notice and satisfactory evidence of the

satisfaction of the debt or setting aside of the judgment or order is given to the contractee.

8 Certificate of discharge

- (1) The worker or tradesperson must sign a certificate of discharge for the amount of the debt if—
 - (a) the contractor or contractee pays the amount of the debt; and
 - (b) the contractor or contractee asks the worker or tradesperson to do so.

Note If a form is approved under s 15 (Approved forms) for a certificate of discharge, the form must be used.

- (2) If the worker or tradesperson refuses to sign a tendered certificate of discharge when asked to do so at the time of payment of the amount of the debt, the worker or tradesperson forfeits, and must pay to the contractor or contractee, a penalty equal to the amount of the debt.
- (3) A proceeding may be taken in the Magistrates Court for the recovery of the penalty.

9 Attachment after notice of action

- (1) When, or any time after, the worker or tradesperson issues an originating process or originating summons against the defendant, the worker or tradesperson may, with the court's leave, serve notice of the action on the contractee stating the amount sued for.

Note If a form is approved under s 15 (Approved forms) for a notice, the form must be used.

- (2) On service of the notice, any amount payable, or that becomes payable, by the contractee to the defendant, or so much of any amount as the court orders, is attached and must remain in the hands of the contractee until the court gives judgment in the action, unless the court on the application of the contractee or defendant otherwise orders.

10 Application for leave to serve notice of action

- (1) The worker or tradesperson may be the only party to the application for leave to serve notice of the action.
- (2) The worker or tradesperson must, in the application, prove on oath or affidavit to the satisfaction of the court that the amount sued for is owing by the contractor.

11 Proceedings after judgment

If the plaintiff obtains judgment against the defendant, the plaintiff must give to the contractee further notice of debt.

Note If a form is approved under s 15 (Approved forms) for the notice, the form must be used.

12 Contractor to give information

- (1) If the worker or tradesperson obtains a certificate of the cause of debt, the contractor must, if asked in writing by the worker or tradesperson, give the worker or tradesperson a certificate stating the name and address of each contractee of the contractor.

Maximum penalty: 50 penalty units.

Note If a form is approved under s 15 (Approved forms) for a certificate, the form must be used.

- (2) A person must not, in a certificate under subsection (1)—
 - (a) state anything that the person knows is false or misleading in a material particular; or
 - (b) omit anything from the certificate without which the certificate is, to the person's knowledge, misleading in a material particular.

Maximum penalty: 50 penalty units.

13 Contractor liable for certain debts of subcontractor

- (1) If the contractor sublets any part of the relevant work, the contractor is responsible to the extent provided by this Act for the wages of the workers employed by, and the materials and work supplied for, the subcontractor.
- (2) A worker employed by, or a tradesperson supplying material or work for, the subcontractor may proceed against the contractor under this Act, as if the worker or tradesperson had been directly employed by, or had directly contracted with, the contractor.

- (3) In this section:

tradesperson—if a person is owed an amount by someone else for work done and materials supplied by the person, the person is a *tradesperson*.

worker—if a person is owed an amount by someone else for work done, but not for materials supplied by the person, the person is a *worker*.

14 Act not taken to affect other remedies or rights under contract

This Act does not affect—

- (a) any remedy that the worker or tradesperson may have against the contractor for the debt owing to the worker or tradesperson; or
- (b) any right under a contract or otherwise between the contractor and contractee.

15 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

16 Effect of amendments made by Justice and Community Safety Amendment Act 2001

- (1) The amendments of this Act made by the *Justice and Community Safety Amendment Act 2001* were made for statute law revision purposes only.
- (2) Without limiting subsection (1), it is declared that the amendments did not affect the meaning or operation of the provisions of this Act in force immediately before the making of the amendments.
- (3) This section expires 3 years after it commences.

17 Forms complying with omitted schedules

- (1) For this Act—
- (a) a document in accordance with the second schedule is taken to be a document in the approved form for section 3 (2); and
 - (b) a document in accordance with the third schedule is taken to be a document in the approved form for section 4 (1); and
 - (c) a document in accordance with the fourth schedule is taken to be a document in the approved form for section 8 (1); and
 - (d) a document in accordance with the fifth schedule is taken to be a document in the approved form for section 9 (1); and
 - (e) a document in accordance with the sixth schedule is taken to be a document in the approved form for section 12 (1).
- (2) For this section, a reference to a schedule is a reference to a schedule to this Act before the commencement of this section.
- (3) This section expires 1 year after it commences.

Dictionary

(see s 2)

amount of the debt—see section 4 (1).

contractee—see section 4 (1).

contractor—see section 4 (1).

defendant—see section 3 (1).

plaintiff—see section 3 (1).

tradesperson—see section 4 (1).

worker—see section 4 (1).

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

3 Legislation history

The *Contractors Debts Act 1897* (the **republished Act**) was originally the *Contractors' Debts Act 1897* of New South Wales.

The republished Act was in force in New South Wales immediately before 1 January 1911 and was continued in force in the ACT by the *Seat of Government Acceptance Act 1909* (Cwlth).

Under the *Seat of Government (Administration) Act 1910* (Cwlth) the republished Act had effect in the ACT as if it were a law of the Territory. Before self-government, the republished Act continued in effect subject to ordinances made under the *Seat of Government (Administration) Act 1910*.

The *Interpretation Act 1967*, section 63 (now repealed) converted all former New South Wales Acts in force in the ACT immediately before 10 November 1999 into laws made by the Legislative Assembly.

The republished Act was renamed as the *Contractors Debts Act 1897* by the *Justice and Community Safety Amendment Act 2001*.

NSW legislation

Contractors' Debts Act 1897 No 29

assented to 6 December 1897

commenced 6 December 1897

as amended by

Commonwealth legislation

New South Wales Acts Application Act 1984 No 41 sch 2 pt 6

notified 10 August 1984 (Cwlth Gaz 1984 No S313)

commenced 10 August 1984

Magistrates Court Ordinance 1985 No 67 sch pt 1

notified 19 December 1985

sch pt 1 commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

Endnotes

4 Amendment history

Legislation after becoming Territory enactment

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1 and s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Justice and Community Safety Amendment Act 2001 No 9 sch 1

notified 8 March 2001 (Gaz 2001 No 10)
ss 1-3, amdt 1.3 commenced 8 March 2001 (s 2 (2))
remainder (amds 1.1, 1.2, 1.4 and 1.5) commenced 8 September 2001
(IA s 10E)

Legislation (Consequential Amendments) Act 2001 No 44 pt 79

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
amds 1.846-1.858 commenced 12 September 2001 (amds 1.846-1.858 and see Gaz 2001 No S65)

4 Amendment history

The *New South Wales Acts Application Ordinance 1984* (the **1984 Act**), which was later renamed the *New South Wales Acts Application Act 1984*, enacted the text of the *Contractors Debts Act 1897* (the **republished Act**) in an amended form. Except for the omission of section 2 and the First Schedule by the 1984 Act, this endnote only contains details of amendments made to the republished Act after the re-enactment of its text.

Title

title sub 2001 No 9 amdt 1.1

Name of Act

s 1 sub 2001 No 9 amdt 1.2

Dictionary

s 2 om 1984 No 41 sch 2 pt 6
ins 2001 No 9 amdt 1.2

Certificate of cause of debt

s 3 sub 2001 No 9 amdt 1.2
am 2001 No 44 amdt 1.846

Payment of amount owed if defendant has contract with someone else

s 4 om 2001 No 9 amdt 1.2
ins 2001 No 9 amdt 1.4
am 2001 No 44 amds 1.847-1.849

Priority of assignments

s 5 om 2001 No 9 amdt 1.3
ins 2001 No 9 amdt 1.4

Recovery of amount assigned

s 6 om 2001 No 9 amdt 1.3
ins 2001 No 9 amdt 1.4

Assignment ceases to operate on satisfaction of debt etc

s 7 sub 2001 No 9 amdt 1.4

Certificate of discharge

s 8 sub 2001 No 9 amdt 1.4
am 2001 No 44 amdt 1.850, amdt 1.851

Attachment after notice of action

s 9 sub 2001 No 9 amdt 1.4
am 2001 No 44 amdt 1.852, amdt 1.853

Application for leave to serve notice of action

s 10 sub 2001 No 9 amdt 1.4
am 2001 No 44 amdt 1.854

Proceedings after judgment

s 11 sub 2001 No 9 amdt 1.4
sub 2001 No 44 amdt 1.855

Contractor to give information

s 12 sub 2001 No 9 amdt 1.4
am 2001 No 44 amdt 1.856, amdt 1.857

Contractor liable for certain debts of subcontractor

s 13 am 1985 No 67 sch pt 1
sub 2001 No 9 amdt 1.4

Act not taken to affect other remedies or rights under contract

s 14 sub 2001 No 9 amdt 1.4

Approved forms

s 15 sub 2001 No 9 amdt 1.4
sub 2001 No 44 amdt 1.858

Effect of amendments made by Justice and Community Safety Amendment Act 2001

s 16 sub 2001 No 9 amdt 1.4
exp 8 September 2004 (s 16 (3))

Forms complying with omitted schedules

s 17 am 1985 No 67 sch pt 1; 1998 No 54 sch
sub 2001 No 9 amdt 1.4
exp 8 September 2002 (s 17 (3))

Dictionary

dict ins 2001 No 9 amdt 1.4

Endnotes

5 Earlier republications

First Schedule	om 1984 No 41 sch 2 pt 6
Second schedule	om 2001 No 9 amdt 1.5
Third schedule	om 2001 No 9 amdt 1.5
Fourth schedule	om 2001 No 9 amdt 1.5
Fifth schedule	om 2001 No 9 amdt 1.5
Sixth schedule	om 2001 No 9 amdt 1.5

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	1985 No 67	31 July 1992

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