



Australian Capital Territory

Contractors Debts Act 1897

A1897-29

Republication No 5

Effective: 24 November 2005 – 28 September 2006

Republication date: 24 November 2005

Last amendment made by A2005-54

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Contractors Debts Act 1897* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 24 November 2005. It also includes any amendment, repeal or expiry affecting the republished law to 24 November 2005.

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 does not include 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 is—

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



Australian Capital Territory

Contractors Debts Act 1897

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24/11/05

Contractors Debts Act 1897
Effective: 24/11/05-28/09/06

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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)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

2B Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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 about contractees

- (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 written statement of the name and address of each contractee of the contractor.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

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*.

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 and expiries 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 endnote.

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.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

This Act was originally a NSW Act—the *Contractors' Debts Act 1897* No 29 (NSW).

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

Under the *Interpretation Act 1967* (repealed), s 65 all former NSW Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former NSW Acts fully into ACT laws.

The republished Act was renamed as the *Contractors Debts Act 1897* by the *Justice and Community Safety Amendment Act 2001*, sch 1.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

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

Endnotes

4 Amendment history

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)

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)

Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.16

notified LR 27 October 2005

s 1, s 2 commenced 27 October 2005 (LA s 75 (1))

sch 1 pt 1.16 commenced 24 November 2005 (s 2)

4 Amendment history

The *New South Wales Acts Application Act 1984*, sch 2, pt 6 sets out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT. This endnote, therefore, only details amendments made after the enactment of the 1984 Act.

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

Notes

s 2A ins A2005-54 amdt 1.88

Offences against Act—application of Criminal Code etc

s 2B ins A2005-54 amdt 1.88

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 amdt 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 about contractees

s 12 sub 2001 No 9 amdt 1.4
am 2001 No 44 amdt 1.856, amdt 1.857
sub A2005-54 amdt 1.89

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

Endnotes

4 Amendment history

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

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 replications

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

Since 12 September 2001 every authorised replication has been published in electronic pdf format on the ACT legislation register. A selection of authorised replications have also been published in printed format. These replications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised replication are identical.

Replication No	Amendments to	Replication date
1	ord 1985 No 67	31 July 1992
2	Act 2001 No 44	12 December 2001
3	A2001-44	9 September 2002
4	A2001-44	9 September 2004

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