



Australian Capital Territory

Arrest on Mesne Process Act 1902 No 24

Republication No 2

Republication date: 15 August 2002

Last amendment made by Act 2001 No 56

Amendments incorporated to 5 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Arrest on Mesne Process Act 1902*, including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes), as in force on 15 August 2002. It also includes any amendment, repeal or expiry affecting the republished law to 5 September 2001.

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 is—

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

Amendments incorporated to
5 September 2001



Australian Capital Territory

Arrest on Mesne Process Act 1902

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Australian Capital Territory

Arrest on Mesne Process Act 1902

An Act to consolidate the enactments relating to arrest on mesne process

Part 1 Preliminary

1 Name of Act

This Act is the *Arrest on Mesne Process Act 1902*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

capias means *capias ad respondendum*.

court means the Supreme Court.

judge means a judge of the Court.

Part 2 Arrest and bail

4 **No arrest on mesne process except under this Act**

No person shall be arrested on mesne process in any civil action in any court except in the cases and in the way provided in this Act.

5 **Order to hold to bail**

In any action in the Supreme Court, if a judge is satisfied by affidavit disclosing the facts constituting the ground of the plaintiff's claim, or by evidence on oath before the judge, that the plaintiff has prima facie a good cause of action in relation to his or her claim against the defendant and is also satisfied by the affidavit of the plaintiff or some other person—

- (a) that the cause of action is to the amount of \$40 or upwards, or that the plaintiff has sustained damage to that amount; and
- (b) that any defendant is about to remove or is making preparations to remove out of the jurisdiction of the court; and
- (c) that the action will be defeated unless the defendant is forthwith apprehended; and
- (d) that the application is made within a reasonable time after the fact of the defendant's intention so to remove came to the knowledge of the plaintiff or might have become known to him or her by reasonable diligence on his part;

the judge may by a special order direct that the defendant shall be held to bail for the sum that the judge considers appropriate, not exceeding the amount of the debt or damages.

6 Issue of writ of capias

- (1) Thereupon the plaintiff, within the time expressed in the order but not afterwards, may sue out 1 or more writ or writs of capias against the defendant.
- (2) Every writ shall be in the form prescribed by the rules of court.

7 Execution of writ

- (1) The sheriff of the Territory or other officer to whom any such writ is directed shall, before the return of the writ but not afterwards, proceed to arrest the defendant on it.
- (2) A writ may be lawfully executed on a Sunday.

8 Order and arrest to be during pendency of action

The order may be made and the defendant arrested under it at any time after the beginning of the action and before final judgment is obtained in it.

9 Defendant to remain in custody until bail bond given or deposit made

The defendant when arrested shall remain in custody until he or she has given a bail bond to the sheriff or other officer, or has made deposit of the sum endorsed on the writ of capias, together with \$20 costs.

10 Subsequent proceedings subject to rules of court

All subsequent proceedings about putting in and perfecting special bail shall be subject to, and in accordance with, the practice and procedure of the court.

Part 3 Discharge

11 Application for order nisi for discharge

Any person arrested on a writ of *capias* may apply to a judge at any time after the arrest for an order on the plaintiff to show cause why the person should not be discharged out of custody.

12 Proceedings on order nisi

Any judge may make absolute or discharge the order, and may direct the costs of the application to be paid by either party, and may make any other order that he or she considers appropriate.

13 Appeal

On the application of either party dissatisfied with any such order, the Supreme Court may discharge or vary it.

14 Discharge on bankruptcy

- (1) Any person in the custody of any sheriff, gaoler, or officer under any such writ shall on the sequestration of his or her estate under the law in force for the time being relating to bankruptcy, be entitled to his or her discharge from the custody on the order of a judge of a court exercising jurisdiction in bankruptcy, and shall be forthwith discharged from the custody either absolutely or on any conditions that the judge may impose.
- (2) No such sheriff, gaoler, or officer shall incur any liability in relation to the discharge to any person for anything done by him or her under this section.

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.

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
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

3 Legislation history

This Act was originally a NSW Act—the *Arrest on Mesne Process Act 1902* No 24 (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 *ACT Self-Government (Consequential Provisions) Act 1988 No 109* (Cwlth), s 12) converted some NSW Acts 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 1 July 1990.

Under the *Interpretation Act 1967*, s 65 (now expired) 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.

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

Arrest on Mesne Process Act 1902 No 24

notified 31 July 1902

commenced 31 July 1902

as amended by

Commonwealth legislation

New South Wales Acts Application Ordinance 1984 No 41

notified 10 August 1984

commenced 10 August 1984

Legislation after becoming Territory enactment

Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.5

notified 5 September 2001 (Gaz 2001 No S65)

commenced 5 September 2001 (s 2 (1))

Endnotes

4 Amendment history

4 Amendment history

The *New South Wales Acts Application Act 1984* (previously the *New South Wales Acts Application Ordinance 1984*), sch 2, pt 4 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. (In its amended form, s 2, pt 4 (ss 15 to 35) and the schedule were omitted). This endnote, therefore, only details amendments made after that date.

Name of Act

s 1 sub 2001 No 56 amdt 3.5

5 Earlier republications

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

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

Republication No	Amendments to	Republication date
1	Ord 1984 No 41	31 August 1992

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