



Australian Capital Territory

# **Law Reform (Miscellaneous Provisions) Act 1955    No 3**

## **Republication No 5**

Republication date: 16 November 2001

Last amendment made by Act 2001 No 56

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Law Reform (Miscellaneous Provisions) Act 1955* as in force on 16 November 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

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- 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

# Law Reform (Miscellaneous Provisions) Act 1955

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
<b>Part 2</b>	<b>Survival of causes of action</b>
4	Effect of death on certain causes of action 3
5	Damages in surviving cause of action 3
7	Provision for cases where person liable dies before or at time of damage 4
8	Savings of other rights 5

---

		Page
<b>Part 3</b>	<b>Torts and antenuptial obligations of wives</b>	
9	Abolition of husband's liability for wife's torts and antenuptial obligations	6
<b>Part 4</b>	<b>Proceedings against and contributions between tortfeasors</b>	
10	Definitions for pt 4	7
11	Each of several wrongdoers may be sued	7
12	Right of contribution	8
13	Exemptions	8
13A	Application of pt 4 to existing wrongs	9
<b>Part 5</b>	<b>Contributory negligence</b>	
14	Definitions for pt 5	10
15	Apportionment of liability	10
16	Application of pt 4	11
17	Claims by third parties	11
18	Pleading of statutory limitation period	11
19	Application of pt 5 to existing wrongs	12
<b>Part 6</b>	<b>Common employment</b>	
21	Abolition of rule of common employment	13
<b>Part 7</b>	<b>Injury arising from mental or nervous shock</b>	
22	Definitions for pt 7	14
23	Personal injury received from mental or nervous shock	14
24	Extensions of liability in certain cases	14
<b>Part 8</b>	<b>Attachment of insurance moneys</b>	
25	Amount of liability to be charge on insurance moneys payable against that liability	17
26	Enforcement of charge	17
27	Protection of insurer	18
28	Certain other provisions not affected	18

		Page
<b>Part 9</b>	<b>Occupiers liability</b>	
29	Rule in Cavalier v Pope abolished	19
<b>Part 10</b>	<b>Loss of consortium and loss of capacity to do household work</b>	
30	Application of pt 10	20
31	Extended meaning of negligence	20
32	Action for loss of consortium abolished	20
33	Damages for loss of capacity to do housework	20
<b>Part 11</b>	<b>Jurisdiction of courts with respect to foreign land</b>	
34	Common law rule of private international law known as the Mocambique rule—partial abrogation	22
35	Discretion to refuse to exercise jurisdiction	22
<b>Part 12</b>	<b>United Kingdom laws—substituted provisions</b>	
<b>Division 12.1</b>	<b>Guardians of children except testamentary guardians</b>	
36	Powers and duties of guardian	23
<b>Division 12.2</b>	<b>Partition of land owned jointly</b>	
37	Court may order a partition of land	24
38	Conveyancing Act, div 4.6 not affected	24
<b>Division 12.3</b>	<b>Application of law to aliens</b>	
39	Person who is not an Australian citizen bound by laws	25
<b>Division 12.4</b>	<b>Lessee's covenants and lessor's covenants</b>	
40	Covenants run with reversion	25
41	Lessor's obligations run with reversion	26
<b>Division 12.5</b>	<b>Alienation of property to defraud creditors</b>	
42	Alienation in fraud of creditors	27
43	Exception	27
44	Instruments in fraud of purchaser	28

## Contents

---

	Page
45      Application of s 44	28
46      Acquisition for less than full value	28
47      Application of s 46	28
48      Definitions for div 12.5	28
<b>Division 12.6      Ending of estate or interest for life</b>	
49      Wrongful holding over	29
50      Evidence of death	29
<b>Division 12.7      Instruments required to be in writing</b>	
51      Instruments to be in writing	31
52      Interest in land	32
53      Savings	32
54      Action does not lie on certain agreements unless in writing	32
<b>Division 12.8      Renewal of headlease without surrender of under-leases</b>	
55      Renewal of headlease	33
56      Rights on renewal	33
57      Application of div 12.8	34
<b>Division 12.9      Action for use and occupation of land</b>	
58      Quantum of damages	34
<b>Division 12.10      Liability for fires accidentally begun</b>	
59      Actions do not lie in respect of damage caused by fires that begin accidentally	35
60      Contract between landlord and tenant not affected	35
<b>Division 12.11      Trials for treason</b>	
61      Manner of trial	35
<b>Division 12.12      Writs of habeas corpus</b>	
62      Court may inquire into truth of return of writ	36
<b>Division 12.13      Power to appoint property</b>	
63      Application of div 12.13	36
64      Appointments to be valid notwithstanding 1 or more objects excluded	36

		Contents
		Page
<b>Division 12.14</b>	<b>Evidence about colonial stock</b>	
65	Register to be evidence	37
66	Certificates and lists to be evidence	37
<b>Part 13</b>	<b>Miscellaneous</b>	
67	Stipulations not of the essence of contracts	38
<b>Endnotes</b>		
1	About the endnotes	39
2	Abbreviation key	39
3	Legislation history	40
4	Amendment history	42
5	Earlier republications	48





Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Law Reform (Miscellaneous Provisions) Act 1955

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An Act to effect certain reforms in the law

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Law Reform (Miscellaneous Provisions) Act 1955*.

## **Part 2                      Survival of causes of action**

### **4            Effect of death on certain causes of action**

- (1) Subject to this part, on the death of a person after 30 March 1955 all causes of action subsisting against or vested in the person survive against his or her estate or, as the case may be, for the benefit of his or her estate.
- (2) This section does not apply to causes of action for defamation or seduction or for inducing a spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

### **5            Damages in surviving cause of action**

- (1) Where a cause of action survives under this part for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—
  - (a) do not include exemplary damages; and
  - (b) where the death of that person has been caused by the act or omission which gives rise to the cause of action—
    - (i) shall, subject to subsection (2), be calculated without reference to any loss or gain to the estate consequent upon the death; and
    - (ii) do not include damages for the pain or suffering of that person or for any bodily or mental harm suffered by the person or for the curtailment of his or her expectation of life; and
    - (iii) do not include damages for the loss of the capacity of that person to earn, or for the loss of future probable earnings of that person, had the person survived; and
    - (iv) do not include damages of the kind referred to in section 33.

- (2) The damages may include an amount to compensate for any reasonable funeral expenses paid or payable by the estate.
- (3) An amount to compensate for any reasonable funeral expenses may be reduced to such an extent (if any) as the court thinks just and equitable having regard to the age or health of the deceased person immediately prior to the occurrence that gave rise to the cause of action.
- (4) In determining whether an expense is reasonable for the purposes of subsection (2), regard shall be had to the religious and cultural circumstances of the deceased person and the members of his or her family.
- (5) In this section:  
*funeral expenses* includes costs related to all or any of the following:
  - (a) the publication of death and funeral notices;
  - (b) the services of an undertaker, including the provision of vehicles;
  - (c) wreaths or floral tributes;
  - (d) a funeral service;
  - (e) a service at the burial or cremation site;
  - (f) burial or cremation;
  - (g) a headstone, plaque, tablet or other memorial.

## **7 Provision for cases where person liable dies before or at time of damage**

Where damage has been suffered by reason of an act or omission in respect of which a cause of action would have subsisted against a person if that person had not died before or at the same time as the damage was suffered, there is taken, for this part, to have been subsisting against the person before his or her death such cause of

action in respect of that act or omission as would have subsisted if the person had died after the damage was suffered.

## **8 Savings of other rights**

- (1) The rights conferred by this part for the benefit of the estates of deceased persons are in addition to, and not in derogation of, any rights conferred by the *Compensation (Fatal Injuries) Act 1968*, and so much of this part as relates to causes of action against the estates of deceased persons applies in relation to causes of action under that Act as it applies in relation to other causes of action not expressly excepted from the operation of section 4.
- (2) The rights conferred by this part for the benefit of the estates of deceased persons and the obligations continued or created under or by virtue of this part against the estates of deceased persons are in addition to, and not in derogation of, any rights conferred or obligations created under the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance).

## **Part 3                      Torts and antenuptial obligations of wives**

### **9            Abolition of husband's liability for wife's torts and antenuptial obligations**

- (1) The husband of a married woman is not, by reason only of his being her husband, liable—
  - (a) in respect of a tort committed by her, whether before or after the marriage, or in respect of a contract entered into, or debt or obligation incurred, by her before the marriage; or
  - (b) to be sued, or made a party to a legal proceeding brought, in respect of any such tort, contract, debt or obligation.
- (2) Subsection (1) does not affect a legal proceeding in respect of a tort if proceedings had been instituted in respect of the tort before 31 March 1955.

## Part 4

# Proceedings against and contributions between tortfeasors

### 10 Definitions for pt 4

In this part:

**court**, in relation to a proceeding, means the court or arbitrator dealing with the proceeding.

**damage** means loss of any kind (including loss of life, personal injury, damage to property and economic loss).

**wrong** means an act or omission (whether or not an offence)—

- (a) that gives rise to a liability in tort in relation to which a defence of contributory negligence is available at common law; or
- (b) that amounts to a breach of a contractual duty of care that is concurrent and coextensive with a duty of care in tort.

### 11 Each of several wrongdoers may be sued

- (1) A judgment or decision against a person for damage caused by a wrong does not bar an action against someone else who is also liable for the same damage.
- (2) However, if separate actions are brought in relation to the same damage—
  - (a) the total amount recovered in the actions cannot exceed the amount of damages awarded in the judgment or decision given first or, if that amount is varied on appeal, the amount as varied; and
  - (b) the plaintiff is only entitled to costs in the action for which judgment or decision is given first (including costs on appeal from the judgment or decision), unless the court considers

there were reasonable grounds for bringing the actions separately.

## 12 Right of contribution

- (1) A person (the *first person*) who is liable for damage caused by a wrong may recover contribution from someone else (a *contributory*) who is also liable for the same damage.
- (2) The contribution is to be an amount that the court considers is just and equitable having regard to the extent of the contributory's responsibility for the damage.
- (3) However, the first person is not entitled to contribution under this section if—
  - (a) the first person is liable to indemnify the contributory against the contributory's liability for the damage; or
  - (b) the court exempts the contributory from liability to make contribution; or
  - (c) the court has directed that contribution to be recovered from a person for the damage is a complete indemnity for the damage.

## 13 Exemptions

- (1) Nothing in this part—
  - (a) applies with respect to a tort committed before 31 March 1955; or
  - (b) affects any criminal proceedings against a person in respect of a wrongful act; or
  - (c) renders enforceable an agreement for indemnity which would not have been enforceable if this part had not been enacted.
- (2) This part has effect subject to the *Construction Practitioners Registration Act 1998*, part 4.



### **13A Application of pt 4 to existing wrongs**

- (1) This part applies to a wrong that happened before the commencement of this section as if the part had been in force when the wrong happened.
- (2) However, this part, as in force before the commencement of this section, continues to apply to a wrong about which—
  - (a) a court has given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against the judgment or decision; or
  - (b) the parties have entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).
- (3) Subsections (2) and (4) and this subsection expire on 1 January 2003.
- (4) Subsection (2) is declared to be a provision to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

## Part 5                      Contributory negligence

### 14      Definitions for pt 5

In this part:

**court**, in relation to a claim, means the court or arbitrator deciding the claim.

**damage** means loss of any kind (including loss of life, personal injury, damage to property and economic loss).

**wrong** means an act or omission (whether or not an offence)—

- (a) that gives rise to a liability in tort in relation to which a defence of contributory negligence is available at common law; or
- (b) that amounts to a breach of a contractual duty of care that is concurrent and coextensive with a duty of care in tort.

### 15      Apportionment of liability

- (1) If a person (the **claimant**) suffers damage as the result partly of the claimant's failure to take reasonable care (**contributory negligence**) and partly the wrong of someone else—
  - (a) a claim in relation to the damage is not defeated because of the claimant's contributory negligence; and
  - (b) the damages recoverable for the wrong are to be reduced to the extent the court considers just and equitable having regard to the claimant's share in the responsibility for the damage.
- (2) However, if the claimant suffered personal injury and the wrong was a breach of statutory duty, the damages recoverable by the claimant in relation to the personal injury are not to be reduced because of the claimant's contributory negligence.
- (3) If a contract or enactment providing for the limitation of liability applies to the claim, the amount of damages awarded to the claimant

because of subsection (1) is not to exceed the maximum limit applying to the claim.

- (4) This section does not operate to defeat any defence arising under a contract.
- (5) Subsection (1) does not apply to a cause of action that arose before 31 March 1955.
- (6) Subsection (2) does not apply to a cause of action that arose before 6 December 1991.

## **16 Application of pt 4**

Part 4 (Proceedings against and contributions between tortfeasors) applies if 2 or more persons are liable (or, if they had all been sued, would have been liable) under section 15 for the damage suffered by a person.

## **17 Claims by third parties**

- (1) This section applies if—
  - (a) a person (the *first person*) suffers damage as the result partly of the first person's failure to take reasonable care (*contributory negligence*) and partly the wrong of someone else; and
  - (b) as the result of the damage to the first person a third person suffers damage.
- (2) In a claim by the third person, the contributory negligence of the first person is to be taken into account under section 15 (Apportionment of liability) in reducing the damages recoverable by the third person for the damage as if the contributory negligence were a failure by the third person to take reasonable care.

## **18 Pleading of statutory limitation period**

- (1) This section applies to a case to which section 15 (Apportionment of liability) applies if—

- (a) the claimant suffered damages as the result partly of the wrong of 2 or more persons; and
  - (b) 1 of those persons avoids liability to another of those persons (or his or her personal representative) by pleading an enactment limiting the time within which proceedings may be taken.
- (2) The person who avoids liability is not entitled to recover damages or contribution from the other person (or his or her personal representative) because of section 15.

## **19 Application of pt 5 to existing wrongs**

- (1) This part applies to a wrong that happened before the commencement of this section as if the part had been in force when the wrong happened.
- (2) However, this part, as in force before the commencement of this section, continues to apply to a wrong about which—
  - (a) a court has given judgment or made a decision (including a judgment or decision about liability only), whether or not an appeal has been made against the judgment or decision; or
  - (b) the parties have entered into an agreement to settle claims arising from the wrong (including an agreement about liability only).
- (3) Subsections (2) and (4) and this subsection expire on 1 January 2003.
- (4) Subsection (2) is declared to be a provision to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

## **Part 6                      Common employment**

### **21      Abolition of rule of common employment**

- (1) An employer is liable in damages for an injury or damage to an employee caused by the wrongful act or omission of another employee in the same way and in the same cases as if the employees had not been engaged in common employment.
- (2) This section applies to injury or damage arising from a wrongful act or omission committed after 30 March 1955, even if the contract of employment was made on or before that date.

## Part 7                      Injury arising from mental or nervous shock

### 22      Definitions for pt 7

In this part:

*child*, in relation to a person, means the son, daughter, grandson, granddaughter, stepson or stepdaughter of that person, or a person to whom that person stands in loco parentis.

*member of the family*, in relation to a person, means the husband, wife, parent, child, brother, sister, half-brother or half-sister of that person.

*parent*, in relation to a person, means the father, mother, grandfather, grandmother, stepfather or stepmother of that person, or a person standing in loco parentis to that person.

### 23      Personal injury received from mental or nervous shock

- (1) In an action for injury to the person caused after 30 March 1955, the plaintiff is not debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.
- (2) In determining a question of liability for injury to the person caused before 31 March 1955, no regard shall be paid to the fact that this section has been enacted or to the provisions of this section.

### 24      Extensions of liability in certain cases

- (1) The liability of a person in respect of injury caused after 30 March 1955 by act or omission by which another person is killed, injured or put in peril extends to include liability for injury arising wholly or in part from mental or nervous shock sustained by—

- (a) a parent or the husband or wife of the person so killed, injured or put in peril; or
  - (b) another member of the family of the person so killed, injured or put in peril, where the person was killed, injured or put in peril within the sight or hearing of that other member of the family.
- (2) Where an action is brought by a member of the family of a person so killed, injured or put in peril in respect of liability for injury arising wholly or in part from mental or nervous shock sustained by the plaintiff and claims have been made against or are apprehended by the defendant at the suit of other members of the family of that person in respect of liability arising by operation of subsection (1) out of the same act or omission, the defendant may apply to the court for the exercise of its powers under subsection (3).
- (3) The court may thereupon stay any proceedings pending at the suit of any such other member of the family arising out of the same act or omission and may proceed in such manner and subject to such orders as to—
  - (a) making members of the family of the person killed, injured or put in peril parties to the action; and
  - (b) who is to have the carriage of the action; and
  - (c) the exclusion of any member of the family who does not come in within a time fixed by the court;as the court thinks just.
- (4) Where an application under subsection (2) is made, the action shall be for the benefit of the original plaintiff and such members of the family of the person killed, injured or put in peril as are joined by the court as plaintiffs in pursuance of the application, and the court (or, if there is a jury, the jury) may award such damages as it thinks proportioned to the injury resulting to the plaintiffs respectively, and the amount awarded, after deducting the costs not recovered from

the defendant, shall be divided amongst the plaintiffs in such shares as the court (or, if there is a jury, the jury) decides.

(5) In this section:

***court*** means—

- (a) in relation to an action in which the amount claimed (whether initially or as reduced by payment, admitted set-off or otherwise) does not exceed the jurisdiction of the Magistrates Court—the Magistrates Court or the Supreme Court; or
- (b) in any other case—the Supreme Court.



## **Part 8                      Attachment of insurance moneys**

### **25      Amount of liability to be charge on insurance moneys payable against that liability**

- (1) If a person (in this part called the *insured*) has entered into a contract of insurance by which he or she is indemnified against liability to pay any damages or compensation, the amount of his or her liability is, on the happening of the event giving rise to the claim for damages or compensation, and notwithstanding that the amount of the liability may not then have been determined, a charge on all insurance moneys that are or may become payable in respect of that liability.
- (2) If, on the happening of the event giving rise to the claim for damages or compensation, the insured (being a corporation) is being wound up, or if any subsequent winding-up of the insured (being a corporation) is taken to have commenced not later than the happening of that event, the provisions of subsection (1) apply notwithstanding the winding-up.
- (3) Every charge created by this section has priority over all other charges affecting the insurance moneys, and where the same insurance moneys are subject to 2 or more charges by virtue of this section those charges have priority between themselves in the order of the dates of the events out of which the liability arose, or, if the charges arise out of events happening on the same date, they rank equally between themselves.

### **26      Enforcement of charge**

- (1) Subject to subsection (2), a charge created by this part is enforceable by way of an action against the insurer in the same way and in the same court as if the action were an action to recover damages or compensation from the insured.

- (2) In respect of any such action and of the judgment given in any such action the parties have, to the extent of the charge, the same rights and liabilities, and the court has the same powers, as if the action were against the insured.
- (3) Except where section 25 (2) applies, no such action shall be commenced in any court except with the leave of that court, and leave shall not be granted where the court is satisfied that the insurer is entitled under the terms of the contract of insurance to disclaim liability, and that any proceedings, including arbitration proceedings, necessary to establish that the insurer is so entitled to disclaim have been taken.
- (4) Such an action may be brought although judgment has been already recovered against the insured for damages or compensation in respect of the same matter.

## **27 Protection of insurer**

- (1) Notwithstanding anything in this part, a payment made by an insurer under the contract of insurance without actual notice of the existence of a charge under this section is, to the extent of that payment, a valid discharge to the insurer.
- (2) An insurer is not liable under this part for any greater sum than that fixed by the contract of insurance between the insurer and the insured.

## **28 Certain other provisions not affected**

Nothing in this part affects the operation of the *Workers Compensation Act 1951* or the *Road Transport (General) Act 1999*, part 10 (Compulsory vehicle insurance).

## **Part 9                      Occupiers liability**

### **29      Rule in Cavalier v Pope abolished**

A lessor of premises is not exempt from owing a duty of care to persons on those premises by reason only that the lessor is not the occupier of those premises.

## **Part 10                      Loss of consortium and loss of capacity to do household work**

### **30      Application of pt 10**

This part does not apply in relation to a cause of action that arose before 6 December 1991.

### **31      Extended meaning of negligence**

In this part, a reference to *negligence* includes a reference to a breach of statutory duty, to a failure to discharge a duty of care and to any other act or omission giving rise to a liability in tort.

### **32      Action for loss of consortium abolished**

Where a wife has been injured as a consequence of the negligence of a person other than her husband, the person is not liable to the husband for any resultant impairment or loss of consortium.

### **33      Damages for loss of capacity to do housework**

- (1) The liability of a person in respect of an injury suffered by another person as a consequence of negligence extends to include liability for damages for any resultant impairment or loss of that other person's capacity to perform domestic services that he or she might reasonably have been expected to perform for his or her household if he or she had not been injured.
- (2) In proceedings for the recovery of damages referred to in subsection (1), it is immaterial—
  - (a) whether the plaintiff performed the domestic services for the benefit of other members of the household or solely for his or her own benefit; and
  - (b) that the plaintiff was not paid to perform those services; and

- (c) that the plaintiff has not been, and will not be, obliged to pay another person to perform those services; and
- (d) that those services have been, or are likely to be, performed (gratuitously or otherwise) by other persons (whether members of the household or not).

## **Part 11**

### **Jurisdiction of courts with respect to foreign land**

#### **34 Common law rule of private international law known as the Mocambique rule—partial abrogation**

- (1) The jurisdiction of a court in any proceedings is not excluded or limited by reason only that the proceedings relate to or otherwise concern land or other immovable property situated outside the Territory.
- (2) Subsection (1) does not empower a court to adjudicate upon title to, or right to the possession of, land or other immovable property situated outside the Territory.

#### **35 Discretion to refuse to exercise jurisdiction**

A court is not bound to exercise jurisdiction in proceedings of a kind referred to in section 34 (1) if the court considers that it is an inappropriate forum in relation to those proceedings.

## **Part 12**

# **United Kingdom laws— substituted provisions**

*Note* The provisions of the divisions of this part were relocated from the *Imperial Acts (Substituted Provisions) Act 1986*, sch 2. (For the effect of a relocation, see *Legislation Act 2001*, s 96.) The 1986 Act substituted provisions for certain UK Acts that applied (or may have applied) in the ACT and repealed those Acts. The 1986 Act, s 4 (1) provided, in effect, that the rules of law about the interpretation of consolidating Acts apply to the interpretation of the provisions of a law set out in schedule 2. These rules of law continue to apply to the divisions of this part (see *Legislation Act 2001*, s 96 (3)).

## **Division 12.1**

# **Guardians of children except testamentary guardians**

*Note* The provisions of this division were substituted for 52 Hen. 3 c 17 (1267) (also known as the Statute of Marlborough).

### **36 Powers and duties of guardian**

- (1) A guardian of a child—
  - (a) may take into his or her custody, and may manage, the real and personal property of the child (not being property held by a trustee under a trust) until he or she ceases to be the guardian of the child; and
  - (b) holds any real and personal property of the child that comes into his or her custody as trustee for the child; and
  - (c) may bring such proceedings as may be necessary to give effect to all or any of his or her powers under this section, including his or her powers as trustee for the child; and
  - (d) is responsible for accounting to the child, when the child attains the age of 18 years, for his or her custody and management of that property.
- (2) Subsection (1) does not apply to or in relation to—

- (a) the chief executive responsible for administering the *Children and Young People Act 1999*, chapter 2 (General objects, principles and parental responsibility) when he or she has parental responsibility for the long-term care, welfare and development of a child because of that Act; or
- (b) a testamentary guardian of a child.

## **Division 12.2 Partition of land owned jointly**

*Note* The provisions of this division were substituted for 31 Hen. 8 c 1 (1539) and 32 Hen. 8 c 32 (1540).

### **37 Court may order a partition of land**

Where—

- (a) an estate of freehold in land is held by 2 or more persons as joint tenants or tenants in common; or
- (b) 2 or more persons hold an estate or interest in land for a term of life, or for a term of 1 year or more, as joint tenants or tenants in common; or
- (c) 2 or more persons hold an estate or interest in land as joint tenants or tenants in common and some 1 or more of those persons hold an estate or interest in the land for a term of life, or for a term of 1 year or more and the other or others of those persons hold an estate or estates of freehold in the land;

the Supreme Court may, upon application made by any 1 or more of those persons, order a partition of the estate or interest in the land held by those persons as joint tenants or tenants in common, and may give all necessary or proper consequential directions.

### **38 Conveyancing Act, div 4.6 not affected**

Section 37 does not affect the operation of the *Conveyancing Act 1919*, division 4.6 (Partition).



## **Division 12.3                      Application of law to aliens**

*Note*        The provisions of this division were substituted for 32 Hen. 8 c 16 (1540).

### **39        Person who is not an Australian citizen bound by laws**

A person who is not an Australian citizen is bound by the laws of the Territory in the same manner as a person who is an Australian citizen.

## **Division 12.4                      Lessee's covenants and lessor's covenants**

*Note*        The provisions of this division were substituted for 32 Hen. 8 c 34 (1540).

### **40        Covenants run with reversion**

- (1) Upon the grant of a lease of land—
- (a) the rent reserved by the lease; and
  - (b) the benefit of every covenant in, or other provision of, the lease required to be observed or performed by the lessee, being a covenant or other provision relating to the subject matter of the lease; and
  - (c) every condition of re-entry, or other condition, contained in the lease;

shall be annexed to, and shall go with, the reversionary estate in the land, or in any part of the land, immediately expectant on the term granted by the lease notwithstanding the severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term so granted, to the income of the whole, or any part, of the land leased.

- (2) Subsection (1) extends to a covenant to do some act relating to the land leased notwithstanding that the subject matter may not be in existence when the covenant is made.
- (3) The benefit of every condition of re-entry or forfeiture for a breach of a covenant or condition contained in a lease may be enforced, and taken advantage of, by the person from time to time entitled, subject to the term granted by the lease, to the income of the whole, or any part, of the land leased, notwithstanding that the person became so entitled, by conveyance or otherwise, after the condition of re-entry or forfeiture had become enforceable.
- (4) Subsections (1), (2) and (3) do not render enforceable by a person a condition of re-entry or forfeiture, or any other condition, that had been waived or released before the person became entitled to enforce the condition.
- (5) This section applies to—
  - (a) a lease made on or after 26 June 1986;
  - (b) rent accruing due, on or after 26 June 1986, under a lease made before that date; and

the benefit of a condition of re-entry or forfeiture for a breach, committed on or after 26 June 1986, of a covenant, condition or provision contained in a lease made before that date.

#### **41 Lessor's obligations run with reversion**

- (1) Upon the lease of land, the obligation imposed on the lessor by a covenant in the lease, being a covenant relating to the subject matter of the lease—
  - (a) shall, to the extent (if any) to which the lessor had power to bind the reversionary estate expectant on the term granted by the lease, be annexed to, and go with, that reversionary estate in that land and in every part of that land; and

- (b) may be enforced and taken advantage of by the person in whom the term is from time to time vested by conveyance, devolution of law or otherwise; and
  - (c) to the extent (if any) to which the lessor had power to bind the person from time to time entitled to that reversionary estate, may be enforced, and taken advantage of, against any person so entitled.
- (2) This section applies to—
- (a) a lease granted on or after 26 June 1986; and
  - (b) a breach committed, on or after 26 June 1986, of a covenant contained in a lease made before that date.

## **Division 12.5                      Alienation of property to defraud creditors**

*Note*            The provisions of this division were substituted for 13 Eliz. 1 c 5 (1571) and 27 Eliz. 1 c 4 (1585).

### **42            Alienation in fraud of creditors**

Subject to section 43, an alienation of property made with intent to defraud creditors is voidable at the instance of a person prejudiced by the alienation.

### **43            Exception**

Section 42—

- (a) shall not be taken to affect the operation of the *Bankruptcy Act 1966* (Cwlth); and
- (b) does not extend to any estate or interest in property acquired by a person by virtue of that alienation as purchaser in good faith without notice of the intent to defraud creditors.

**44 Instruments in fraud of purchaser**

An instrument (not being a will) that operates, or would, on registration, operate, as a voluntary alienation of land made with intent to defraud a subsequent purchaser is voidable at the instance of a subsequent purchaser.

**45 Application of s 44**

For section 44, where an instrument to which the section is registered before a subsequent purchase, it shall not be taken to have been made with intent to defraud a subsequent purchaser by reason only of the subsequent purchase or that the alienation of the land was not made for valuable consideration.

**46 Acquisition for less than full value**

An acquisition of any reversionary interest (including any interest by way of expectancy or possibility) in real or personal property made in good faith, without fraud or unfair dealing and for money or money's worth is not liable to be opened or set aside by reason only that it was acquired for less than its full value.

**47 Application of s 46**

Section 46 shall not be taken to affect the jurisdiction of a court to set aside or modify an unconscionable bargain.

**48 Definitions for div 12.5**

In this division:

*land* includes tenements and hereditaments, corporeal or incorporeal, and every estate or interest therein, whether vested or contingent, freehold or leasehold, and whether at law or in equity.

*property* includes real and personal property, and any estate or interest in real or personal property, and any debt, anything in action and any other right or interest.

***purchaser*** means a purchaser for valuable consideration, and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in property.

***valuable*** consideration includes marriage, but does not include a nominal consideration in money or money's worth.

## **Division 12.6                      Ending of estate or interest for life**

*Note*        The provisions of this division were substituted for 18 and 19 Chas. 2 c 11 (1666) and 6 Anne c 72 (1707).

### **49        Wrongful holding over**

Where a person entitled to an estate or interest in any property, being an estate or interest determinable upon a life or lives, holds over or continues in possession of that property, of that estate or interest in that property or of the rents, profits or income thereof, after the determination of that estate or interest and without the express consent of the person next entitled upon the determination of that estate or interest, the person is liable in damages, or to account for the rents, profits or income, or both, to the person entitled to the property, or to the rents, profit or income, after the determination of that estate or interest.

### **50        Evidence of death**

- (1) Where a reversion, remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the person entitled to the reversion, remainder or other estate or interest upon the determination of the life or lives may, in proceedings in a court claiming relief on the basis that the determination of the life or lives has occurred, adduce evidence of belief that that life has, or those lives have, determined and of the grounds for that belief and, if evidence is so adduced, then, unless—
  - (a) the person on whose life the reversion, remainder or other estate or interest is expectant is produced in court or otherwise shown to be living; or

- (b) the persons on whose lives the reversion, remainder or other estate or interest is expectant are produced in court or otherwise shown to be living;

as the case may be, the court may, in its discretion, order that the person, or the persons, shall, for the purpose of the proceedings, be treated as having died, and give relief accordingly.

- (2) If, in proceedings in a court of a kind referred to in subsection (1), evidence is adduced that a person upon whose life the reversion, remainder or other estate or interest in property is expectant has remained beyond Australia, or has otherwise been absent from the place in Australia at which he or she might have been expected to have been found, for a period of 7 years or more, then, unless it is proved to the satisfaction of the court that the person is still living, the court may, in its discretion, order that the person shall, for the purpose of the proceedings, be treated as having died, and may give relief accordingly.
- (3) If, after judgment has, in proceedings in respect of the death of a person of a kind referred to in subsection (2), been given against the plaintiff, other proceedings are brought by the plaintiff in a court on the basis that the life of the person has determined, the court may make an order staying those other proceedings permanently or until such future order or for such time as it may think fit.
- (4) If, after a person having an estate or interest in property determinable on a life or lives has been evicted from, or deprived of, any property, or any estate or interest in any property, by reason of a judgment of a court giving relief on the basis that the life has, or the lives have, determined, it appears to a court that—
  - (a) the person on whose life that estate or interest depended is alive, or was alive at the time when the person was evicted from, or deprived of, that property or estate or interest in property; or
  - (b) the persons on whose lives that estate or interest depended are alive, or were alive at the time when the person was evicted

from, or deprived of, that property or estate or interest in that property;

the court may give such relief as is appropriate in the circumstances.

## **Division 12.7                    Instruments required to be in writing**

*Note*        The provisions of this division were substituted for 29 Chas. 2 c 3, s 1, s 2, s 3, s 7, s 8 and s 9 (1677) (also known as the *Statute of Frauds 1677*).

### **51        Instruments to be in writing**

- (1) Subject to this division—
  - (a) an interest in land cannot be created or disposed of by a person except—
    - (i) by writing signed by the person, or by the agent of the person duly authorised in writing to do so; or
    - (ii) by the will of the person; or
    - (iii) by operation of law; and
  - (b) a declaration of trust by a person in respect of land or an interest in land must be—
    - (i) in writing signed by the person; or
    - (ii) made by the will of the person; and
  - (c) a disposition by a person of an equitable interest or trust subsisting at the time of the disposition must be—
    - (i) in writing signed by the person or by the agent of the person duly authorised in writing to do so; or
    - (ii) made by the will of the person.
- (2) Subsection (1) does not affect the creation or operation of a resulting, implied or constructive trust.

## **52 Interest in land**

An interest in land that is created by parol and not put into writing and signed by the person creating the interest, or by the agent of that person duly authorised in writing to do so, has effect, whether or not consideration is given for the interest, as an interest at will only.

## **53 Savings**

Nothing in section 51 or 52—

- (a) affects the creation by parol of a lease at the best rent that can reasonably be obtained without taking a fine, being a lease that takes effect in possession—
  - (i) for a term not exceeding 3 years without a right for the lessee to extend the term; or
  - (ii) for a term not exceeding 3 years with a right for the lessee to extend the term, at the best rent that can be obtained without taking a fine, for a further period, but so that the period of the lease and the period of the extension do not in the aggregate exceed 3 years; or
- (b) invalidates a disposition by will; or
- (c) affects an interest validly created before 26 June 1986; or
- (d) affects a right to acquire an interest in land by virtue of taking possession of the land; or
- (e) affects the operation of the law relating to part performance.

## **54 Action does not lie on certain agreements unless in writing**

- (1) An action or proceeding does not lie against a person upon a contract for the sale or other disposition of land or of an interest in land unless the agreement on which the action or proceeding is brought, or a memorandum or note of that agreement, is in writing



- (2) Subsection (1) applies to contracts made before, on or after 26 June 1986, and does not affect the law relating to part performances or sales by a court.
- (3) Subsection (1) applies to land under the provisions of the *Land Titles Act 1925*.

## Division 12.8      **Renewal of headlease without surrender of under-leases**

*Note* The provisions of this division were substituted for 4 Geo. 2 c 28, s 6 (1730).

## 55 Renewal of headlease

Where a lease is duly surrendered for the purpose of being renewed, a new lease granted by the chief landlord is, notwithstanding that all or any of the under-leases have not been surrendered, as valid for all purposes as it would be if all the under-leases derived from the lease had been surrendered in order to be renewed at or before the grant of the new lease.

## 56 Rights on renewal

Where a new lease is granted upon the surrender of a lease (the *original lease*)—

- (a) a person in whom an estate for life or lives, or for years, is from time to time vested by virtue of the new lease, and the executors and administrators of that person—
  - (i) are entitled to the rents reserved by any under-lease derived from the original lease; and
  - (ii) are entitled to have the covenants and duties imposed by any under-lease derived from the original lease duly performed; and

- (iii) are entitled to the same remedies for the recovery of those rents, or in respect of a breach of those covenants or duties, as if the original lease had not been surrendered but had remained in force; and
- (b) any under-lessee by virtue of an under-lease derived from the original lease continues to hold the lands comprised in that under-lease as if the original lease had not been surrendered but had remained in force; and
- (c) the chief landlord is entitled to the same remedies, by way of entry upon the lands comprised in an under-lease derived from the original lease, for rents reserved by the new lease or for breaches of the covenants and duties imposed by the new lease (so far as those rents, covenants and duties do not exceed the rents reserved, or the covenants and duties imposed, by the original lease) as he or she would have if the original lease had not been surrendered but had remained in force or if each under-lease derived from the original lease had been surrendered and regranted under the new lease.

## **57 Application of div 12.8**

Sections 55 and 56 do not apply to land under the provisions of the *Land Titles Act 1925*.

## **Division 12.9 Action for use and occupation of land**

*Note* The provisions of this division were substituted for 11 Geo. 2 c 19, s 14 (1737).

## **58 Quantum of damages**

In an action for damages for use and occupation of land, evidence may be given of a demise of the land, whether by deed, by parol or otherwise, and of the rent reserved by that demise and shall be received by the court as evidence of the quantum of damages for the

use and occupation of the land, but proof of such a demise is not a defence to the action.

## **Division 12.10      Liability for fires accidentally begun**

*Note*      The provisions of this division were substituted for 24 Geo. 3 c 78, s 86 (1774).

### **59      Actions do not lie in respect of damage caused by fires that begin accidentally**

- (1) An action does not lie against a person in whose house, room or other building, or on whose property, a fire accidentally begins for, or in respect of, damage caused by the fire to another person, or to the property of another person.
- (2) Subsection (1) applies notwithstanding any other law, usage or custom in force in the Territory.
- (3) For subsection (1), a fire shall not be taken to have begun accidentally if it was started deliberately or negligently.

### **60      Contract between landlord and tenant not affected**

Nothing in section 59 affects, or renders void, any term of a contract or agreement made between a landlord and his or her tenant relating to the leasing or letting of premises, or a part of premises, by the landlord to the tenant.

## **Division 12.11      Trials for treason**

*Note*      The provisions of this division were substituted for 39 and 40 Geo. 3 c 93 (1800).

### **61      Manner of trial**

A person charged with treason shall be arraigned and tried in like manner, and according to the like course and order of trial, in every respect as if the person were charged with murder.

## **Division 12.12 Writs of habeas corpus**

*Note* The provisions of this division were substituted for 56 Geo. 3 c 100 (1816).

### **62 Court may inquire into truth of return of writ**

Upon the return of a writ of habeas corpus, the court before which the writ is returnable may inquire into the truth of the matters set forth in the return of the writ.

## **Division 12.13 Power to appoint property**

*Note* The provisions of this division were substituted for 37 and 38 Vic. c 37 (1874).

### **63 Application of div 12.13**

This division applies to appointments made after 26 June 1986 in the exercise of powers created before, on or after that date.

### **64 Appointments to be valid notwithstanding 1 or more objects excluded**

- (1) An appointment in exercise of a power to appoint property among several objects is valid and effectual notwithstanding that 1 of the objects does not take a share, or 2 or more of the objects do not take shares, in that property either by virtue of the appointment or in default of an appointment in exercise of the power.
- (2) Nothing in subsection (1) prejudices or affects a provision in a deed, will or other instrument creating a power to appoint property among several objects that declares the amount of the share from which no object of the power shall be excluded or some 1 or more of the objects of the power shall not be excluded.

## **Division 12.14 Evidence about colonial stock**

*Note* The provisions of this division were substituted for 40 and 41 Vic. c 59, s 17 and s 18 (1877).

## **65 Register to be evidence**

- (1) A register of stock kept in the United Kingdom to which the *Colonial Stock Act 1877* (UK), as from time to time amended and in force in the United Kingdom, applies is evidence in a proceeding—
  - (a) of the matters entered in it; and
  - (b) if a person is entered in the register as the proprietor of colonial stock to which that Act applies—of the title of that person to that stock.
- (2) Evidence of a register referred to in subsection (1) may be given in a proceeding by the production of—
  - (a) a copy of, or an extract from, the register that is proved to be an examined copy of, or extract from, the register; or
  - (b) a document that purports to be a copy of, or an extract from, the register, being a document that has endorsed on it, or annexed to it, a certificate by the person having the custody of the register certifying that the document is a true copy of, or extract from, the register.
- (3) The production of a document purporting to be a certificate referred to in subsection (2) is, in a proceeding, prima facie evidence that the person by whom the certificate purported to be signed is the person having the custody of the register concerned and that the certificate was signed and given by that person.

## **66 Certificates and lists to be evidence**

- (1) A certificate or list given under the *Colonial Stock Act 1877* (UK), section 18, as from time to time amended and in force in the United Kingdom, is evidence in a proceeding of the matters stated in it.
- (2) The production of a document purporting to be a certificate or list referred to in subsection (1) is, in a proceeding, prima facie evidence that the person by whom it purports to have been given is the person duly authorised to give it and that it was duly given by that person.

## **Part 13                      Miscellaneous**

### **67        Stipulations not of the essence of contracts**

Stipulations in a contract, about time or anything else, that, in accordance with the rules of equity, are taken not to be, or not to have been, of the essence of the contract must be interpreted and have effect at law in accordance with those rules.

## 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

## Endnotes

3      Legislation history

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### 3      **Legislation history**

The *Law Reform (Miscellaneous Provisions) Act 1955* was originally the *Law Reform (Miscellaneous Provisions) Ordinance 1955*. It became an ACT Act on self-government (11 May 1989).

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

#### **Legislation before self-government**

##### **Law Reform (Miscellaneous Provisions) Act 1955 No 3**

notified 31 March 1955

commenced 31 March 1955

as amended by

##### **Law Reform (Miscellaneous Provisions) Ordinance 1965 No 14**

notified 9 September 1965

commenced 9 September 1965

##### **Law Reform (Miscellaneous Provisions) Ordinance 1968 No 10**

notified 13 June 1968

commenced 13 June 1968

##### **Ordinances Revision Ordinance 1977 No 65 sch 2**

notified 22 December 1977

commenced 22 December 2001

##### **Law Reform (Miscellaneous Provisions) Ordinance 1982 No 95**

notified 21 December 1982

commenced 21 December 1982

##### **Limitation Ordinance 1985 No 66 sch**

notified 19 December 1985

commenced 19 December 1985



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**Legislation after self-government****Law Reform (Miscellaneous Provisions) (Amendment) Act 1991 No 19**

notified 10 May 1991 (Gaz 1991 No S36)

commenced 10 May 1991

**Law Reform (Miscellaneous Provisions) (Amendment) Act (No 2) 1991 No 73**

notified 6 December 1991 (Gaz 1991 No S134)

commenced 6 December 1991

**Workers' Compensation (Consequential Amendments) Act 1991 No 106 sch**

notified 15 January 1992 (Gaz 1992 No S3)

s 1, s 2 commenced 15 January 1992 (s 2 (1))

sch commenced 22 January 1992 (s 2 (2) and Gaz 1992 No S9)

**Law Reform (Miscellaneous Provisions) (Amendment) Act 1993 No 42**

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2)

**Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2)

**Statute Law Revision Act 1994 No 26 sch**

notified 31 May 1994 (Gaz 1994 No S93)

commenced 31 May 1994 (s 2)

**Law Reform (Miscellaneous Provisions) (Amendment) Act 1995 No 35**

notified 31 October 1995 (Gaz 1995 No S266)

commenced 31 October 1995 (s 2)

**Construction Practitioners Registration Act 1998 No 53 s 32**

notified 16 November 1998 (Gaz 1998 No S205)

s 1, s 2 commenced 16 November 1998 (s 2 (1))

s 32 commenced 18 December 1998 (s 2 (2) and Gaz 1998 No S213)

**Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)

s 1, s 2 commenced 10 November 1999 (s 2 (1))

sch 2 commenced 10 May 2000 (s 2 (2))

## Endnotes

### 4 Amendment history

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**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Road Transport Legislation Amendment Act 1999 No 79 sch 3**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 10 November 1999 (IA s 10B)  
sch 3 commenced 1 March 2000 (s 2 and Gaz 2000 No S5)

**Law Reform (Miscellaneous Provisions) Amendment Act 2001 No 12 pt 2 and sch 1**

notified 5 April 2001 (Gaz 2001 No 14)  
commenced 5 April 2001 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 216**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 216 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) No 56 pt 3.31**

notified 5 September 2001 (Gaz 2001 No S65)  
s 1, s 2 commenced 5 September 2001 (IA s 10B)  
pt 3.31 commenced 5 September 2001 (s 2 (1))

## 4 Amendment history

**Name of Act**

s 1 sub 2001 No 12 amdt 1.1

**Parts**

s 2 om 1977 No 65

**Ordinance to bind Crown**

s 3 om 1993 No 44 sch 2

**Effect of death on certain causes of action**

s 4 am 1993 No 42 sch; 2001 No 12 amdt 1.2

**Damages in surviving cause of action**

s 5 am 1968 No 10; 1982 No 95; 1991 No 73 s 3; 1993 No 42 sch;  
2001 No 12 amds 1.3-1.5

**Conditions precedent to survival of causes of action**

s 6 am 1965 No 14  
sub 1968 No 10  
om 1985 No 66

**Provision for cases where person liable dies before or at time of damage**

s 7 am 1993 No 42 sch; 2001 No 12 amdt 1.6

**Savings of other rights**

s 8 am 1965 No 14; 1968 No 10; 1993 No 42 sch; 1999 No 79 s 5  
sch 3

**Abolition of husband's liability wife's for torts and antenuptial obligations**

s 9 am 1993 No 42 sch; 2001 No 12 amdt 1.7

**Definitions for pt 4**

s 10 am 1968 No 10  
sub 2001 No 12 amdt 1.8

**Each of several wrongdoers may be sued**

s 11 am 1968 No 10; 1993 No 42 sch  
sub 2001 No 12 amdt 1.8

**Right of contribution**

s 12 am 1993 No 42 sch  
sub 2001 No 12 amdt 1.8

**Exemptions**

s 13 am 1998 No 53 s 32; 2001 No 12 amdt 1.9

**Application of pt 4 to existing wrongs**

s 13A ins 2001 No 12 amdt 1.10  
am 2001 No 44 amdt 1.2611  
s 13A (2), (3), (4) exp 1 January 2003 (s 13A (3))

**Contributory negligence**

pt 5 hdg sub 2001 No 12 s 4

**Definitions for pt 5**

s 14 am 1968 No 10  
sub 2001 No 12 s 4

**Apportionment of liability**

s 15 am 1993 No 42 sch  
sub 2001 No 12 s 4

**Application of pt 4**

s 16 am 1968 No 10; 1993 No 42 sch  
sub 2001 No 12 s 4

**Claims by third parties**

s 17 am 1993 No 42 sch  
sub 2001 No 12 s 4

**Pleading of statutory limitation period**

s 18 am 1993 No 42 sch  
sub 2001 No 12 s 4

## Endnotes

### 4 Amendment history

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#### **Application of pt 5 to existing wrongs**

s 19 am 1993 No 42 sch  
sub 2001 No 12 s 4  
am 2001 No 44 amdt 1.2611  
s 19 (2), (3), (4) exp 1 January 2003 (s 19 (3))

#### **Savings**

s 20 am 1993 No 42 sch  
om 2001 No 12 s 4

#### **Contributory negligence not a defence in actions for breach of statutory duty**

s 20A ins 1991 No 73 s 4  
om 2001 No 12 s 4

#### **Abolition of rule of common employment**

s 21 sub 2001 No 12 amdt 1.11

#### **Personal injury received from mental or nervous shock**

s 23 am 2001 No 12 amdt 1.13, amdt 1.14

#### **Extension of liability in certain cases**

s 24 am 1993 No 42 sch; 2001 No 12 amdts 1.15-1.18

#### **Amount of liability to be charge on insurance moneys payable against that liability**

s 25 am 1993 No 42 sch; 2001 No 12 amdt 1.19, amdt 1.20

#### **Enforcement of charge**

s 26 am 1993 No 42 sch; 1994 No 26

#### **Protection of insurer**

s 27 am 1993 No 42 sch

#### **Certain other provisions not affected**

s 28 am 1991 No 106 sch; 1993 No 42 sch; 1999 No 79 sch 3

#### **Occupiers' liability**

pt 9 hdg ins 1991 No 19 s 3

#### **Rule in Cavalier v Pope abolished**

s 29 ins 1991 No 19 s 3

#### **Loss of consortium and loss of capacity to do household work**

pt 10 hdg ins 1991 No 73 s 5

#### **Application of pt 10**

s 30 ins 1991 No 73 s 5  
am 2001 No 12 amdt 1.21

#### **Extended meaning of negligence**

s 31 ins 1991 No 73 s 5

#### **Action for loss of consortium abolished**

s 32 ins 1991 No 73 s 5

**Damages for loss of capacity to do housework**

s 33 ins 1991 No 73 s 5

**Jurisdiction of courts with respect to foreign land**

pt 11 hdg ins 1995 No 35 s 4

**Common law rule of private international law known as the Mocambique rule—partial abrogation**

s 34 ins 1995 No 35 s 4

**Discretion to refuse to exercise jurisdiction**

s 35 ins 1995 No 35 s 4

**United Kingdom laws (substituted provisions)**pt 12 hdg ins 1999 No 66 sch 3  
sub 2001 No 56 amdt 3.440**Guardians of children except testamentary guardians**div 12.1 hdg (prev pt 12 div 1 hdg) ins 1999 No 66 sch 3  
renum R5 LA**Powers and duties of guardian**s 36 ins 1999 No 66 sch 3  
am 1999 No 64 sch 2**Partition of land owned jointly**div 12.2 hdg (prev pt 12 div 2 hdg) ins 1999 No 66 sch 3  
renum R5 LA**Court may order a partition of land**

s 37 ins 1999 No 66 sch 3

**Partition Act not affected**

s 38 ins 1999 No 66 sch 3

**Application of law to aliens**div 12.3 hdg (prev pt 12 div 3 hdg) ins 1999 No 66 sch 3  
renum R5 LA**Person who is not an Australian citizen bound by laws**

s 39 ins 1999 No 66 sch 3

**Lessee's covenants and lessor's covenants**div 12.4 hdg (prev pt 12 div 4 hdg) ins 1999 No 66 sch 3  
renum R5 LA**Covenants run with reversion**

s 40 ins 1999 No 66 sch 3

**Lessor's obligations run with reversion**

s 41 ins 1999 No 66 sch 3

**Alienation of property to defraud creditors**div 12.5 hdg (prev pt 12 div 5 hdg) ins 1999 No 66 sch 3  
renum R5 LA

## Endnotes

4 Amendment history

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### **Alienation in fraud of creditors**

s 42 ins 1999 No 66 sch 3

### **Exception**

s 43 ins 1999 No 66 sch 3

### **Instruments in fraud of purchaser**

s 44 ins 1999 No 66 sch 3

### **Application of s 44**

s 45 ins 1999 No 66 sch 3

### **Acquisition for less than full value**

s 46 ins 1999 No 66 sch 3

### **Application of s 46**

s 47 ins 1999 No 66 sch 3

### **Definitions for div 12.5**

s 48 ins 1999 No 66 sch 3

### **Ending of estate or interest for life**

div 12.6 hdg (prev pt 12 div 6 hdg) ins 1999 No 66 sch 3  
renum R5 LA

### **Wrongful holding over**

s 49 ins 1999 No 66 sch 3

### **Evidence of death**

s 50 ins 1999 No 66 sch 3

### **Instruments required to be in writing**

div 12.7 hdg (prev pt 12 div 7 hdg) ins 1999 No 66 sch 3  
renum R5 LA

### **Instruments to be in writing**

s 51 ins 1999 No 66 sch 3

### **Interest in land**

s 52 ins 1999 No 66 sch 3

### **Savings**

s 53 ins 1999 No 66 sch 3

### **Action does not lie on certain agreements unless in writing**

s 54 ins 1999 No 66 sch 3

### **Renewal of headlease without surrender of under-leases**

div 12.8 hdg (prev pt 12 div 8 hdg) ins 1999 No 66 sch 3  
renum R5 LA

### **Renewal of headlease**

s 55 ins 1999 No 66 sch 3

### **Rights on renewal**

s 56 ins 1999 No 66 sch 3

**Application of div 12.8**

s 57 ins 1999 No 66 sch 3

**Action for use and occupation of land**

div 12.9 hdg (prev pt 12 div 9 hdg) ins 1999 No 66 sch 3  
renum R5 LA

**Quantum of damages**

s 58 ins 1999 No 66 sch 3

**Liability for fires accidentally begun**

div 12.10 hdg (prev pt 12 div 10 hdg) ins 1999 No 66 sch 3  
renum R5 LA

**Actions do not lie in respect of damage caused by fires that begin accidentally**

s 59 ins 1999 No 66 sch 3

**Contract between landlord and tenant not affected**

s 60 ins 1999 No 66 sch 3

**Trials for treason**

div 12.11 hdg (prev pt 12 div 11 hdg) ins 1999 No 66 sch 3  
renum R5 LA

**Manner of trial**

s 61 ins 1999 No 66 sch 3

**Writs of habeas corpus**

div 12.12 hdg (prev pt 12 div 12 hdg) ins 1999 No 66 sch 3  
renum R5 LA

**Court may inquire into truth of return of writ**

s 62 ins 1999 No 66 sch 3

**Power to appoint property**

div 12.13 hdg (prev pt 12 div 13 hdg) ins 1999 No 66 sch 3  
renum R5 LA

**Application of div 12.13**

s 63 ins 1999 No 66 sch 3

**Appointments to be valid notwithstanding 1 or more objects excluded**

s 64 ins 1999 No 66 sch 3

**Evidence about colonial stock**

div 12.14 hdg (prev pt 12 div 14 hdg) ins 1999 No 66 sch 3  
renum R5 LA

**Register to be evidence**

s 65 ins 1999 No 66 sch 3

**Certificates and lists to be evidence**

s 66 ins 1999 No 66 sch 3

## Endnotes

5 Earlier republishings

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### **Miscellaneous**

pt 13 hdg ins 2001 No 56 amdt 3.441

### **Stipulations not of the essence of contracts**

s 67 ins 2001 No 56 amdt 3.441

## 5 Earlier republishings

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

Republication No	Amendments to	Republication date
1	Act 1991 No 106	31 March 1992
2	Act 1993 No 44	28 February 1994
3	Act 1995 No 35	31 January 1998
4	Act 1999 No 79	1 March 2000



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