



Australian Capital Territory

Law Reform (Miscellaneous Provisions) Act 1955 No 3

Republication No 8

Effective: 17 January 2003

Republication date: 17 January 2003

Last amendment made by Act 2002 No 49

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Law Reform (Miscellaneous Provisions) Act 1955* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 17 January 2003. It also includes any amendment, repeal or expiry affecting the republished law to 17 January 2003.

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

Law Reform (Miscellaneous Provisions) Act 1955

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
Part 12	United Kingdom laws—substituted provisions
Division 12.1	Guardians of children except testamentary guardians
36	Powers and duties of guardian 3
Division 12.2	Partition of land owned jointly
37	Court may order a partition of land 4
38	Conveyancing Act, div 4.6 not affected 5

R8
17/01/03

Law Reform (Miscellaneous Provisions) Act 1955

contents 1

	Page
Division 12.3 Application of law to aliens	
39 Person who is not an Australian citizen bound by laws	5
Division 12.4 Lessee’s covenants and lessor’s covenants	
40 Covenants run with reversion	5
41 Lessor’s obligations run with reversion	6
Division 12.5 Alienation of property to defraud creditors	
42 Alienation in fraud of creditors	7
43 Exception	7
44 Instruments in fraud of purchaser	8
45 Application of s 44	8
46 Acquisition for less than full value	8
47 Application of s 46	8
48 Definitions for div 12.5	8
Division 12.6 Ending of estate or interest for life	
49 Wrongful holding over	9
50 Evidence of death	9
Division 12.7 Instruments required to be in writing	
51 Instruments to be in writing	11
52 Interest in land	12
53 Savings	12
54 Action does not lie on certain agreements unless in writing	13
Division 12.8 Renewal of headlease without surrender of under-leases	
55 Renewal of headlease	13
56 Rights on renewal	13
57 Application of div 12.8	14
Division 12.11 Trials for treason	
61 Manner of trial	15
Division 12.12 Writs of habeas corpus	
62 Court may inquire into truth of return of writ	15
Division 12.13 Power to appoint property	
63 Application of div 12.13	15

	Page
64 Appointments to be valid notwithstanding 1 or more objects excluded	15
Part 13 Stipulations in contracts	
67 Stipulations not of the essence of contracts	17
Part 14 Abolition of maintenance, champerty and a form of barratry	
68 Abolition of certain common law offences	18
69 Saving of existing rights and liabilities	18
Endnotes	
1 About the endnotes	19
2 Abbreviation key	19
3 Legislation history	20
4 Amendment history	23
5 Earlier republications	31



Australian Capital Territory

Law Reform (Miscellaneous Provisions) Act 1955

An Act to effect certain reforms in the law

Part 1 Preliminary

1 Name of Act

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

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 signed by that person or by another person duly authorised by that person to do so.
- (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 12.11 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.

Part 12 United Kingdom laws—substituted provisions
Division 12.13 Power to appoint property

Section 64

- (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.

Part 13 Stipulations in contracts

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.

Part 14 **Abolition of maintenance, champerty and a form of barratry**

68 Abolition of certain common law offences

The following common law offences are abolished:

- (a) maintenance;
- (b) champerty;
- (c) being a common barrator.

Note For the abolition of the torts of maintenance and champerty, see *Civil Law (Wrongs) Act 2002*, s 151A.

69 Saving of existing rights and liabilities

The *Legislation Act 2001*, section 84 (Saving of operation of repealed and amended laws) applies to the abolition of an offence under section 68 as if the section repealed a law.

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	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Law Reform (Miscellaneous Provisions) Ordinance 1955 No 3* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances 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).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

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

Legislation before becoming Territory enactment

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

Legislation after becoming Territory enactment**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)

Endnotes

3 Legislation history

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))

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 see 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))

Law Reform (Miscellaneous Provisions) Amendment Act 2002 No 34

notified LR 8 October 2002
s 1, s 2 commenced 8 October 2002 (LA s 75 (1))
remainder commenced 9 October 2002 (s 2)

Civil Law (Wrongs) Act 2002 No 40 div 3.2.7

notified LR 10 October 2002
s 1, s 2 commenced 10 October 2002 (LA s 75 (1))
div 3.2.7 commenced 1 November 2002 (s 2 (2) and CN2002-13)

Statute Law Amendment Act 2002 (No 2) No 49 pt 3.11

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

pt 3.11 commenced 17 January 2003 (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

Survival of causes of action

pt 2 hdg om 2002 No 40 amdt 3.27

Effect of death on certain causes of action

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

om 2002 No 40 amdt 3.27

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 amdts 1.3-1.5

om 2002 No 40 amdt 3.27

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

om 2002 No 40 amdt 3.27

Savings of other rights

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

sch 3

om 2002 No 40 amdt 3.27

Torts and antenuptial obligations of wives

pt 3 hdg om 2002 No 40 amdt 3.27

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

om 2002 No 40 amdt 3.27

Endnotes

4 Amendment history

Proceedings against and contributions between tortfeasors

pt 4 hdg om 2002 No 40 amdt 3.27

Definitions for pt 4

s 10 am 1968 No 10
sub 2001 No 12 amdt 1.8
om 2002 No 40 amdt 3.27

Each of several wrongdoers may be sued

s 11 am 1968 No 10; 1993 No 42 sch
sub 2001 No 12 amdt 1.8
om 2002 No 40 amdt 3.27

Right of contribution

s 12 am 1993 No 42 sch
sub 2001 No 12 amdt 1.8
om 2002 No 40 amdt 3.27

Exemptions

s 13 am 1998 No 53 s 32; 2001 No 12 amdt 1.9
om 2002 No 40 amdt 3.27

Application of pt 4 to existing wrongs

s 13A ins 2001 No 12 amdt 1.10
am 2001 No 44 amdt 1.2611
om 2002 No 40 amdt 3.27

Contributory negligence

pt 5 hdg sub 2001 No 12 s 4
om 2002 No 40 amdt 3.27

Definitions for pt 5

s 14 am 1968 No 10
sub 2001 No 12 s 4
om 2002 No 40 amdt 3.27

Apportionment of liability

s 15 am 1993 No 42 sch
sub 2001 No 12 s 4
om 2002 No 40 amdt 3.27

Application of pt 4

s 16 am 1968 No 10; 1993 No 42 sch
sub 2001 No 12 s 4
om 2002 No 40 amdt 3.27

Claims by third parties

s 17 am 1993 No 42 sch
sub 2001 No 12 s 4
om 2002 No 40 amdt 3.27

Pleading of statutory limitation period

s 18 am 1993 No 42 sch
sub 2001 No 12 s 4
om 2002 No 40 amdt 3.27

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
om 2002 No 40 amdt 3.27

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

Common employment

pt 6 hdg om 2002 No 40 amdt 3.27

Abolition of rule of common employment

s 21 sub 2001 No 12 amdt 1.11
om 2002 No 40 amdt 3.27

Injury arising from mental or nervous shock

pt 7 hdg om 2002 No 40 amdt 3.27

Definitions for pt 7

s 22 om 2002 No 40 amdt 3.27

Personal injury received from mental or nervous shock

s 23 am 2001 No 12 amdt 1.13, amdt 1.14
om 2002 No 40 amdt 3.27

Extension of liability in certain cases

s 24 am 1993 No 42 sch; 2001 No 12 amdts 1.15-1.18
om 2002 No 40 amdt 3.27

Attachment of insurance moneys

pt 8 hdg om 2002 No 40 amdt 3.27

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
om 2002 No 40 amdt 3.27

Enforcement of charge

s 26 am 1993 No 42 sch; 1994 No 26
om 2002 No 40 amdt 3.27

Endnotes

4 Amendment history

Protection of insurer

s 27 am 1993 No 42 sch
om 2002 No 40 amdt 3.27

Certain other provisions not affected

s 28 am 1991 No 106 sch; 1993 No 42 sch; 1999 No 79 sch 3
om 2002 No 40 amdt 3.27

Occupiers liability

pt 9 hdg ins 1991 No 19 s 3
om 2002 No 40 amdt 3.27

Rule in Cavalier v Pope abolished

s 29 ins 1991 No 19 s 3
om 2002 No 40 amdt 3.27

Loss of consortium and loss of capacity to do household work

pt 10 hdg ins 1991 No 73 s 5
om 2002 No 40 amdt 3.27

Application of pt 10

s 30 ins 1991 No 73 s 5
am 2001 No 12 amdt 1.21
om 2002 No 40 amdt 3.27

Extended meaning of negligence

s 31 ins 1991 No 73 s 5
om 2002 No 40 amdt 3.27

Action for loss of consortium abolished

s 32 ins 1991 No 73 s 5
om 2002 No 40 amdt 3.27

Damages for loss of capacity to do housework

s 33 ins 1991 No 73 s 5
om 2002 No 40 amdt 3.27

Jurisdiction of courts with respect to foreign land

pt 11 hdg ins 1995 No 35 s 4
om 2002 No 40 amdt 3.27

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

s 34 ins 1995 No 35 s 4
om 2002 No 40 amdt 3.27

Discretion to refuse to exercise jurisdiction

s 35 ins 1995 No 35 s 4
om 2002 No 40 amdt 3.27

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

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

Endnotes

4 Amendment history

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
om 2002 No 40 amdt 3.27

Quantum of damages

s 58 ins 1999 No 66 sch 3
om 2002 No 40 amdt 3.27

Liability for fires accidentally begun

div 12.10 hdg (prev pt 12 div 10 hdg) ins 1999 No 66 sch 3
renum R5 LA
om 2002 No 40 amdt 3.27

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

s 59 ins 1999 No 66 sch 3
om 2002 No 40 amdt 3.27

Contract between landlord and tenant not affected

s 60 ins 1999 No 66 sch 3
om 2002 No 40 amdt 3.27

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
om 2002 No 34 s 4

Register to be evidence

s 65 ins 1999 No 66 sch 3
om 2002 No 34 s 4

Endnotes

4 Amendment history

Certificates and lists to be evidence

s 66 ins 1999 No 66 sch 3
om 2002 No 34 s 4

Stipulations in contracts

pt 13 hdg ins 2001 No 56 amdt 3.441
sub 2002 No 34 s 5

Stipulations not of the essence of contracts

s 67 ins 2001 No 56 amdt 3.441

Abolition of maintenance, champerty and a form of barratry

pt 14 hdg ins 2002 No 34 s 6

Abolition of certain common law offences

s 68 ins 2002 No 34 s 6
am 2002 No 49 amdt 3.97

Abolition of torts of maintenance and champerty

s 69 ins 2002 No 34 s 6
sub 2002 No 49 amdt 3.98

Preservation of liability under certain contracts

s 70 ins 2002 No 34 s 6
om 2002 No 49 amdt 3.98

Lawyers' conduct not affected

s 71 ins 2002 No 34 s 6
om 2002 No 49 amdt 3.98

Saving of existing rights and liabilities

s 72 ins 2002 No 34 s 6
om 2002 No 49 amdt 3.98

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	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
5	Act 2001 No 56	16 November 2001
6	Act 2002 No 34	9 October 2002
7	Act 2002 No 40	1 November 2002

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

© Australian Capital Territory 2003

