



Australian Capital Territory

# **Oaths and Affirmations Act 1984**

**A1984-79**

**Republication No 7**

**Effective: 11 July 2007**

Republication date: 11 July 2007

Last amendment made by A2007-16

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Oaths and Affirmations Act 1984* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 July 2007. It also includes any amendment, repeal or expiry affecting the republished law to 11 July 2007.

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](http://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

# Oaths and Affirmations Act 1984

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Australian Capital Territory

# Oaths and Affirmations Act 1984

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An Act relating to oaths and affirmations

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Oaths and Affirmations Act 1984*.

### 2 Dictionary

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

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

For example, the signpost definition '*court*—see the *Evidence Act 1971*, dictionary.' means that the term '*court*' is defined in that dictionary and the definition applies to this Act.

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

### 3 Notes

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

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

### 5 Certain provisions subject to court rules

The following provisions of this Act are subject to rules made, and forms approved, under the *Court Procedures Act 2004*:

- section 7 (Oath or affirmation by witness)
- section 8 (Oath or affirmation by interpreter of spoken language)
- section 9 (Oath or affirmation by interpreter of signs)
- section 10 (Oath or affirmation by deponent to affidavit)

- section 11 (Authority to administer oath etc)
- section 12 (Swearing or affirming of affidavit)
- section 13 (Affidavit by affirmation)
- part 5 (Manner of taking oaths and making affirmations).

## Part 2 Form of oaths and affirmations

### 6 Oath or affirmation of office

- (1) An oath of office to be taken by a person under a law in force in the ACT shall, where the form of oath is not prescribed by or under that law, be in accordance with the form of oath specified in schedule 1.
- (2) Where a person is entitled or required to make an affirmation of office instead of taking an oath of office and the form of affirmation is not prescribed by or under the relevant law, the affirmation shall be in accordance with the form of affirmation specified in schedule 1.

### 6A Oaths or affirmations by members of Assembly

- (1) A member of the Legislative Assembly must, before taking his or her seat, make and subscribe either or both of the following:
  - (a) an oath or affirmation in accordance with the form in schedule 1A, part 1A.1;
  - (b) an oath or affirmation in accordance with the form in schedule 1A, part 1A.2.
- (2) This section has effect despite the Self-Government Act, section 9 (1).

### 7 Oath or affirmation by witness

- (1) An oath to be taken by a person called as a witness in a proceeding shall, where no other form of oath is prescribed by or under the relevant law, be in accordance with the form of oath specified in schedule 2.
- (2) Where a person called as a witness in a proceeding is entitled or required to make an affirmation instead of taking an oath, and the form of affirmation is not prescribed by or under the relevant law,

the affirmation shall be in accordance with the form of affirmation specified in schedule 2.

**8 Oath or affirmation by interpreter of spoken language**

- (1) An oath to be taken by a person who is to interpret a spoken language in a proceeding shall be in accordance with the form of oath specified in schedule 3.
- (2) Where a person who is to interpret a spoken language in a proceeding is entitled or required to make an affirmation instead of taking an oath, the affirmation shall be in accordance with the form of affirmation specified in schedule 3.

**9 Oath or affirmation by interpreter of signs**

- (1) An oath to be taken by a person who is to interpret statements in a proceeding made by means of signs shall be in accordance with the form of oath specified in schedule 4.
- (2) Where a person who is to interpret statements in a proceeding made by means of signs is entitled or required to make an affirmation instead of taking an oath, the affirmation shall be in accordance with the form of affirmation specified in schedule 4.

**10 Oath or affirmation by deponent to affidavit**

- (1) An oath to be taken by a deponent to an affidavit for use in a proceeding shall be in accordance with the form of oath specified in schedule 5.
- (2) Where a deponent to an affidavit for use in a proceeding is entitled or required to make an affirmation instead of taking an oath, the affirmation shall be in accordance with the form of affirmation specified in schedule 5.

## Part 3 Administration of oath or affidavit

### 10A Authority to administer oath or affirmation to member of Assembly

An oath or affirmation referred to in section 6A shall be made and subscribed before the Chief Justice of the Supreme Court or a judge of that court authorised by the Chief Justice.

### 11 Authority to administer oath etc

- (1) Subject to section 10A, an oath to be taken or affidavit to be made for the purposes of a proceeding or for any other purpose under a law in force in the ACT may be sworn or affirmed—
  - (a) in the ACT, before a justice of the peace, a notary public for the ACT or a legal practitioner; and
  - (b) in a State or another Territory, before—
    - (i) a person referred to in paragraph (a); or
    - (ii) a justice of the peace of that State or Territory; or
    - (iii) a notary public for that State or Territory; or
    - (iv) any other person having authority to administer an oath in that State or Territory; and
  - (c) in any other place, before—
    - (i) a person referred to in paragraph (a); or
    - (ii) an Australian diplomatic or consular representative in the country in which that place is situated; or
    - (iii) a notary public for that place; or
    - (iv) any person having authority to administer an oath in that place.

(2) A person authorised under subsection (1) to administer an oath may, for any purpose for which the oath may be administered, administer an affirmation.

(3) In this section:

*Australian diplomatic or consular representative* means—

- (a) an Australian consular officer under the *Consular Fees Act 1955* (Cwlth), section 2 (Interpretation); or
- (b) an Australian diplomatic officer under the *Consular Fees Act 1955* (Cwlth), section 2; or
- (c) an employee mentioned in the *Consular Fees Act 1955* (Cwlth), section 3 (c) or (d) (Fees may be prescribed for consular Acts); or

*Note* The *Consular Fees Act 1955* (Cwlth), s 3 (c) and (d) mentions employees of the Commonwealth and employees of the Australian Trade Commission authorised, in writing, by the secretary to the Cwlth department.

## **12 Swearing or affirming of affidavit**

Where, by a law in force in the ACT, an affidavit is required or permitted to be made, the affidavit may be sworn or affirmed in accordance with part 5.

## **13 Affidavit by affirmation**

Where a deponent to an affidavit makes an affirmation under section 10 (2), the form of jurat shall be varied and the necessary alterations shall be made so as to conform with the affirmation.

## Part 4 Affirmations

### 14 Entitlement to make affirmation

- (1) In any case where an oath is required or permitted by law, a person is entitled, instead of taking such an oath, to make an affirmation.
- (2) This section has effect notwithstanding anything contained in any other Territory law.

### 15 Requirement to make affirmation

Where a person required or permitted by law to take an oath—

- (a) appears to a person before whom an oath may be taken to be incompetent to take an oath; or
- (b) is objected to, on grounds a person before whom an oath may be taken considers reasonable, as incompetent to take an oath; or
- (c) wishes to take an oath in a form and manner permitted under section 21, but it is not, in the opinion of a person before whom an oath may be taken, reasonably practicable without inconvenience or delay for him to take that oath at the appropriate time and place;

the person before whom an oath may be taken may require that firstmentioned person to make an affirmation instead of taking an oath.

### 16 Effect of affirmation

An affirmation made by a person under this part has the same effect for all purposes as if that person had taken an oath.

## Part 5

# Manner of taking oaths and making affirmations

### 17 Oath or affirmation by spoken words or other means

- (1) A person taking an oath shall, if the person is physically capable of doing so, in the presence of the person before whom the oath is taken—
  - (a) hold in his or her hand the Bible, the New Testament or the Old Testament; and
  - (b) at the same time, say the words of the oath.
- (2) A person making an affirmation shall, if the person is physically capable of doing so, in the presence of the person before whom the affirmation is made, say the words of the affirmation.
- (3) The words of an oath or affirmation shall be spoken in the English language or such other language as the person before whom the oath is taken or affirmation made allows.
- (4) A person who is incapable of speaking may express the words of an oath or affirmation by signs or by such other means as the person before whom the oath is taken or affirmation made allows.

### 18 Written evidence of oath or affirmation of office

A person who has taken or made an oath or affirmation of office shall, in the presence of the person before whom the oath or affirmation was taken or made, sign an instrument showing the form of that oath or affirmation, and the person before whom the oath or affirmation was taken or made shall certify on the instrument that the oath or affirmation was taken or made and the date on which it was taken or made.

**19 Affidavit by person unable to understand English**

Where, in relation to an affidavit, an oath or affirmation is allowed to be taken or made in a language other than English, the person before whom the affidavit is made shall certify in or below the jurat that a person whose name and address are stated in the certificate swore or affirmed before the firstmentioned person—

- (a) that he or she had in the presence of the firstmentioned person interpreted to the deponent—
  - (i) the contents of the affidavit; and
  - (ii) the words of the oath or affirmation; and
- (b) that the deponent seemed to understand the affidavit and the oath or affirmation; and
- (c) that the deponent had sworn or affirmed that the contents of the affidavit so interpreted to him or her were true.

**20 Affidavit by illiterate or blind person**

Where it appears to the person before whom an affidavit is made that the deponent is illiterate or blind, the person shall certify in or below the jurat that the affidavit was read in his or her presence to the deponent and that the deponent seemed to understand the affidavit.

## Part 6                      Miscellaneous

### 21                      **Alternative form and manner for oath**

Subject to sections 6A and 15 but notwithstanding any other provision of this Act, where a person who is required or permitted to take an oath states, in the presence of the person before whom the oath is to be taken, that an oath taken in a form and manner other than the form and manner specified in this Act would be binding on him or her, the oath may be taken in that form and manner.

### 22                      **Validity of oath or affirmation**

- (1) Where a person has taken or made an oath or affirmation the person is required or permitted to take or make in accordance with a form prescribed by or under a law in force in the ACT or in any form and manner that the person has stated to be binding on him or her, that person is bound by the oath or affirmation for all purposes for which it was taken or made.
- (2) Where a person has taken an oath in accordance with this Act or another law in force in the ACT, the fact that the person did not at the relevant time have any religious belief or did not for any other reason regard the oath as binding on the person does not affect the validity of that oath.

### 23                      **Effect of noncompliance**

The validity of an oath or affirmation is not affected by reason only of a failure to comply with the provisions of part 2 or 5.

### 24                      **Oath or affirmation for purposes of foreign tribunal**

- (1) Subject to this section, a person appointed by a foreign tribunal to take evidence in the ACT for that tribunal may administer an oath or affirmation in the ACT for the purpose of taking that evidence.

- (2) Where an oath or affirmation to be administered under subsection (1) relates to evidence to be taken for a foreign tribunal other than a court or a judge, the oath or affirmation shall not be administered without the consent of the Minister.
- (3) Nothing in this section authorises a person to administer an oath or affirmation in connection with criminal proceedings.
- (4) In this section:

*foreign tribunal* means a person or body authorised by a law of a place outside the ACT to take or receive evidence in that place.

## **25 Oath or affirmation without authority**

- (1) A person shall not, unless the person is authorised to do so by or under a law in force in the ACT—
  - (a) require another person to take an oath or make an affirmation; or
  - (b) administer an oath or affirmation to another person.
- (2) A person who wilfully contravenes subsection (1) commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **26 Oath etc for purposes of foreign law**

- (1) Subject to section 24 (2), where an oath, affirmation or affidavit is required or permitted by a foreign law for any purpose, nothing in this Act makes it an offence for an authorised person to administer the oath or affirmation, or take the affidavit, for that purpose.
- (2) In this section:

*authorised person* means a person authorised under this Act to administer an oath or affirmation, or take an affidavit.

*foreign law* means a law of a place outside the ACT.

**27      Fee**

A fee is not payable to any person in respect of an oath taken or affirmation made in accordance with this Act.

## **Schedule 1 Oath and affirmation of office**

(see s 6)

### Oath

I, A.B., do swear that I will well and truly serve in the office of

So help me God!

### Affirmation

I, A.B., do solemnly and sincerely affirm and declare that I will well and truly serve in the office of

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## **Schedule 1A      Oaths and affirmations by member of Legislative Assembly**

(see s 6A)

### **Part 1A.1**

Oath

I, A.B., swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law. So help me God!

Affirmation

I, A.B., solemnly affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law.

## **Part 1A.2**

### Oath

I, A.B., swear that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law. So help me God!

### Affirmation

I, A.B., solemnly affirm that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law.

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## **Schedule 2      Oath and affirmation by witness**

(see s 7)

### **Oath**

I swear by Almighty God that the evidence I shall give will be the truth, the whole truth, and nothing but the truth.

### **Affirmation**

I solemnly declare and affirm that the evidence I shall give will be the truth, the whole truth, and nothing but the truth.

## **Schedule 3      Oath and affirmation by interpreter of spoken language**

(see s 8)

### Oath

I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully translate from the English language into the language and from the language into the English language.

### Affirmation

I solemnly declare and affirm that I shall, to the best of my skill and ability, truly and faithfully translate from the English language into the language and from the language into the English language.

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## **Schedule 4      Oath and affirmation by interpreter of statements made by means of signs**

(see s 9)

### **Oath**

I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully communicate by signs or other convenient means words spoken in the English language and translate into the English language statements made by means of signs.

### **Affirmation**

I solemnly declare and affirm that I shall, to the best of my ability, truly and faithfully communicate by signs or other convenient means words spoken in the English language and translate into the English language statements made by means of signs.

## **Schedule 5      Oath and affirmation by deponent to affidavit**

(see s 10)

### Oath

I swear by Almighty God that the signature to this affidavit is my signature and that every statement in the affidavit is true.

### Affirmation

I solemnly declare and affirm that the signature to this affidavit is my signature and that every statement in the affidavit is true.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- affidavit
- instrument (see s 14)
- oath.

*court*—see the *Evidence Act 1971*, dictionary.

*proceeding*—see the *Evidence Act 1971*, dictionary.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

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

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

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

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

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

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

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Oaths and Affirmations Ordinance 1984* No 79 (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).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **Oaths and Affirmations Act 1984 No 79**

notified 19 December 1984

commenced 19 December 1984

as amended by

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

#### Legislation after becoming Territory enactment

##### **Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)

s 1, s 2 commenced 29 November 1994 (s 2 (1))

sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

##### **Oaths and Affirmations (Amendment) Act 1995 No 34**

notified 31 October 1995 (Gaz 1995 No S266)

commenced 31 October 1995 (s 2)

## Endnotes

3 Legislation history

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**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
commenced 18 December 1995 (s 2)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch commenced 1 June 1998 (s 2 (2))

**Legislation (Consequential Amendments) Act 2001 No 44 pt 263**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 263 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

**Court Procedures (Consequential Amendments) Act 2004 A2004-60  
sch 1 pt 1.57**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.57 commenced 10 January 2005 (s 2 and see Court  
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Justice and Community Safety Legislation Amendment Act 2005  
(No 2) A2005-11 pt 6**

notified LR 11 March 2005  
s 1, s 2 commenced 11 March 2005 (LA s 75 (1))  
pt 6 commenced 12 March 2005 (s 2)

**Statute Law Amendment Act 2005 (No 2) A2005-62 sch 3 pt 3.17**

notified LR 21 December 2005  
s 1, s 2 commenced 21 December 2005 (LA s 75 (1))  
sch 3 pt 3.17 commenced 11 January 2006 (s 2 (1))

**Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.29**

notified LR 20 June 2007  
s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))  
sch 3 pt 3.29 commenced 11 July 2007 (s 2 (1))

## 4 Amendment history

### Name of Act

s 1 sub A2005-62 amdt 3.165

### Dictionary

s 2 om 2001 No 44 amdt 1.2997  
ins A2005-11 s 31

### Notes

s 3 om 2001 No 44 amdt 1.2997  
ins A2005-11 s 31

### Definitions for Act

s 4 om A2005-11 s 31  
def **barrister and solicitor** om 1997 No 96 sch  
def **court** om A2005-11 s 31  
def **diplomatic or consular representative** om A2005-11  
s 31  
def **proceeding** om A2005-11 s 31

### Certain provisions subject to court rules

s 5 hdg sub A2004-60 amdt 1.598  
s 5 am 1995 No 46 sch  
sub A2004-60 amdt 1.598

### Oaths or affirmations by members of Assembly

s 6A ins 1995 No 34 s 4  
sub A2005-62 amdt 3.166

### Authority to administer oath or affirmation to member of Assembly

s 10A ins 1995 No 34 s 5

### Authority to administer oath etc

s 11 am 1995 No 34 s 6; 1997 No 96 sch; A2005-11 s 32

### Written evidence of oath or affirmation of office

s 18 am A2005-62 amdt 3.167

### Alternative form and manner for oath

s 21 am 1995 No 34 s 7

### Oath or affirmation for purposes of foreign tribunal

s 24 am 1989 No 38 sch 1

### Oath or affirmation without authority

s 25 am 1994 No 81 sch

### Amendment of *Seat of Government (Administration) Ordinance 1930*

s 28 om 1989 No 38 sch 1

### Oaths and affirmations by member of Legislative Assembly

sch 1A ins 1995 No 34 s 8

## Endnotes

### 5 Earlier republications

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pt 1A.1 hdg (prev sch 1 pt 1 hdg) renum R3 LA

pt 1A.2 hdg (prev sch 1 pt 2 hdg) renum R3 LA

#### **Dictionary**

dict

ins A2005-11 s 33

def ***court*** ins A2005-11 s 33

sub A2007-16 amdt 3.130

def ***proceeding*** ins A2005-11 s 33

sub A2007-16 amdt 3.130

## 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. Electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Ord 1989 No 38	30 June 1991
2	Act 1995 No 46	1 January 1996
3	A2001-44	8 February 2002
4	A2005-60	10 January 2005
5	A2005-11	12 March 2005
6	A2005-62	11 January 2006

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