



Australian Capital Territory

Law Reform (Misrepresentation) Act 1977 No 13

Republication No 3

Republication date: 31 July 2002

Last amendment made by Act 1994 No 81

Amendments incorporated to 29 November 1994

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Law Reform (Misrepresentation) Act 1977* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 31 July 2002. It also includes any amendment, repeal or expiry affecting the republished law to 29 November 1994.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

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

Amendments incorporated to
29 November 1994



Australian Capital Territory

Law Reform (Misrepresentation) Act 1977

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Amendments incorporated to
29 November 1994



Australian Capital Territory

Law Reform (Misrepresentation) Act 1977

An Act to amend the law relating to misrepresentation

1 Name of Act

This Act is the *Law Reform (Misrepresentation) Act 1977*.

2 Meaning of *court*

In this Act:

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

court includes an arbitrator.

3 Removal of certain bars to rescission

If a person has entered into a contract after a misrepresentation has been made to the person, the person shall, if otherwise the person would be entitled to rescind the contract without alleging fraud, be entitled, subject to this Act, to rescind the contract notwithstanding that—

- (a) the misrepresentation has become a term of the contract; or
- (b) the contract has been exercised; or
- (c) a conveyance, transfer or other document has been registered under a law of a State or Territory as a result of the contract.

4 Damages for misrepresentation

- (1) If a person enters into a contract after a misrepresentation has been made to the person by—

- (a) another party to the contract; or
- (b) a person acting for, or on behalf of, another party to the contract; or
- (c) a person who receives any direct or indirect material advantage as a result of the formation of the contract;

and as a result of so entering into the contract the person suffers loss, any person (whether or not he or she is the person by whom the

misrepresentation is made) who would be liable for damages in tort in relation to the loss had the misrepresentation been made fraudulently, shall, subject to this section, be so liable, notwithstanding that the misrepresentation was not made fraudulently.

- (2) It is a defence to an action under subsection (1) that—
- (a) if the representation was made by the defendant—the defendant had reasonable grounds for believing, and did believe up to the time the contract was made, that the representation was true; and
 - (b) if the representation was made by a person acting for or on behalf of the defendant—both the defendant and that person had reasonable grounds for believing, and did believe up to the time the contract was made, that the representation was true.

5 Damages instead of rescission

- (1) If in proceedings arising out of a contract it is proved that a person has rescinded, or is entitled to rescind, the contract on the ground of misrepresentation other than fraudulent misrepresentation, the court, after consideration of the consequences of the rescission, and the consequences of a declaration under this subsection, in the circumstances of the case, may, if it considers it just and equitable to do so, declare the contract to be subsisting and award the damages it considers fair and reasonable.
- (2) Damages may be awarded against a person under subsection (1) whether or not the person is liable for damages under section 4 (1) but—
- (a) a court shall, in assessing damages under a provision of section 4 or this section, take into account any award of damages under this section or section 4, as the case requires, or of damages or compensation under any other law; and

- (b) in assessing damages or compensation in proceedings under any other law relating to a contract, the court shall take into account any award of damages under this Act.

6 Exclusion clauses

If an agreement contains a provision that would exclude or restrict—

- (a) any liability to which a party to a contract may be subject because of a misrepresentation made by the party before the contract was made; or
- (b) any remedy available to another party to the contract because of such a misrepresentation;

that provision shall be of no effect except to the extent (if any) to which, in any proceedings arising out of the contract, the court may allow reliance on it as being fair and reasonable in the circumstances of the case.

7 Misrepresentation in trade or commerce an offence

- (1) If in the course of trade or commerce a person makes a misrepresentation—
 - (a) for the purpose of causing or inducing another person to enter into a contract; or
 - (b) for the purpose of causing or inducing another person to pay any pecuniary amount, or to make over or transfer any real or personal property, to the person by whom the misrepresentation is made or to any other person;

the person by whom the misrepresentation is made commits an offence against this Act.

Maximum penalty: 200 penalty units.

- (2) It is a defence to a prosecution for an offence against this section that the person by whom the representation was made believed on reasonable grounds that the representation was true.

8 Negligent misrepresentation

- (1) If the misrepresentation referred to in section 7 (1) is made—
- (a) by a person acting in the course of his or her employment—his or her employer; or
 - (b) by a person duly authorised to act on behalf of another person—that other person;

commits of an offence against this Act.

Maximum penalty: 200 penalty units.

- (2) It is a defence to a prosecution for an offence against this section that—
- (a) the defendant took reasonable precautions to prevent the commission of offences against this section by persons acting on behalf or in his or her employment; or
 - (b) that the defendant did not know, and could not reasonably be expected to have known, that the representation was made or that it was untrue.

9 Presumption in certain cases

- (1) If in proceedings under section 7 or 8 it is proved that a misrepresentation in fact acted as a material inducement to a person—
- (a) to enter into a contract; or
 - (b) to pay any pecuniary amount, or to make over or transfer any real or personal property, to the person by whom the misrepresentation was made, or to any other person;

and that, in consequence, the person by whom the misrepresentation was made derived any direct or indirect material advantage, it shall be presumed, unless the contrary is otherwise established, that the misrepresentation was made for the purpose of inducing the person to whom it was made to enter into that contract, to pay that

pecuniary amount, or to make over or transfer that property, as the case requires.

- (2) A person convicted of an offence against section 7 or 8 is not liable to prosecution under another Territory law for an offence arising out of the same facts.

10 Application

Nothing in this Act applies to or in relation to a misrepresentation, or an agreement, made before the commencement of this Act.

Endnotes

1 About the endnotes

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

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

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

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

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

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

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Law Reform (Misrepresentation) Ordinance 1977* No 13 (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 their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before becoming Territory enactment

Law Reform (Misrepresentation) Act 1977 No 13

notified 30 May 1977

commenced 30 May 1977

as amended by

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)

4 Amendment history

Misrepresentation in trade or commerce an offence

s 7 am 1994 No 81 sch

Negligent misrepresentation

s 8 am 1994 No 81 sch

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	not amended	31 October 1990
2	not amended	31 October 1993

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