



Australian Capital Territory

# **Married Persons Property Act 1986**

**A1986-18**

**Republication No 4**

**Effective: 10 January 2005 – 11 April 2007**

Republication date: 10 January 2005

Last amendment made by A2004-60

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Married Persons Property Act 1986* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 10 January 2005. It also includes any amendment, repeal or expiry affecting the republished law to 10 January 2005.

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

# Married Persons Property Act 1986

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10/01/05

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Australian Capital Territory

# Married Persons Property Act 1986

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An Act relating to the rights and liabilities of married persons in relation to property

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**1 Name of Act**

This Act is the *Married Persons Property Act 1986*.

**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* means the Supreme Court or the Magistrates Court.

**3 Legal capacity of married women**

- (1) Except as otherwise provided by another Territory law, a married woman has, for all purposes, the same rights, privileges, powers, capacities, duties and liabilities as a married man, whether she is acting in a personal, official, representative or fiduciary capacity.
- (2) Subsection (1) applies in relation to any married woman, whether she was married before or after the commencement of this Act, and whether or not her marriage took place in the ACT.

**4 Authority to pledge spouse's credit**

- (1) A husband living with his wife has the same presumed or implied authority to pledge his wife's credit as a wife living with her husband has to pledge her husband's credit.
- (2) Subsection (1) applies to 2 people in a domestic partnership who are not married to each other in the same way as it applies to a husband and wife who are living together.

*Note* For the meaning of *domestic partnership*, see *Legislation Act*, s 169.

**5 Agent of necessity**

Any rule of law or equity giving a married woman authority, as agent of necessity of her husband, to pledge his credit or to borrow money on his credit ceases to have any force or effect in the ACT.

**6 Restriction on anticipation or alienation**

Any instrument executed after the commencement of this Act is void to the extent that it purports to attach any restriction on anticipation or alienation to the enjoyment by a woman of any property that could not have been attached to the enjoyment by a man of that property.

**7 Debts incurred before marriage**

A married person is not liable for any debt incurred by his or her spouse before their marriage.

**8 Crimes in relation to spouse's property**

An act that would, if done by a married man in relation to any property of his wife, make him liable to criminal proceedings shall, if done by a married woman in relation to any property of her husband, make her liable to criminal proceedings.

**9 Transfer of property to spouse or child**

(1) If property or an interest in property paid for by a woman with her money, or owned by a woman—

- (a) is vested in or transferred to her husband, or her child or another person to whom she stands in place of a parent; or
- (b) is vested jointly in or transferred jointly to herself and her husband, or herself and her child or herself and another person to whom she stands in place of a parent;

then, unless the contrary intention appears, the same presumptions of gift or advancement shall be taken to arise in relation to the property or the interest in property, as the case may be, as would arise if the property or interest had been paid for by a man with his money, or owned by a man, and had respectively—

- (c) vested in or been transferred to his wife, or his child or another person to whom he stands in place of a parent; or

(d) vested jointly in, or been transferred jointly to, himself and his wife, or himself and his child or himself and another person to whom he stands in place of a parent.

(2) If—

(a) a husband and his wife both contribute to the purchase of property or an interest in property; and

(b) the property or the interest is vested in or transferred to one spouse (the *transferee*),

then, unless the contrary intention appears, the transferee shall be taken to hold the property or the interest, as the case may be, in trust for himself or herself and the other spouse as joint tenants.

## **10 Purchase or transfer of property before marriage**

(1) If property or an interest in property paid for by a person with his or her money or owned by the person (the *transferor*) is, in the transferor's contemplation of his or her marriage to another person (the *transferee*) vested in or transferred to the transferee then, unless the contrary intention appears—

(a) until the marriage takes place, the transferee shall be taken to hold the property, or the interest in property, as the case may be, in trust for the transferor; and

(b) on the marriage of the transferor to the transferee, the transferee shall be taken to hold the property or interest absolutely.

(2) If property or an interest in property paid for by a person with his or her money or owned by the person (the *transferor*) is, in the transferor's contemplation of his or her marriage to another person (the *transferee*), vested jointly in or transferred jointly to the transferor and the transferee then, unless the contrary intention appears—

- (a) until the marriage takes place, the transferor and the transferee shall be taken to hold the property, or the interest in property, as the case may be, in trust for the transferor; and
  - (b) on the marriage of the transferor to the transferee, the transferor and the transferee shall be taken to hold the property or interest as joint tenants.
- (3) If—
- (a) 2 persons, in contemplation of their marriage to each other, both contribute to the purchase of property or an interest in property; and
  - (b) the property or the interest in property, as the case may be, is vested in or transferred to one of the persons (the *transferee*), then, unless the contrary intention appears—
  - (c) until the marriage takes place, the property or the interest shall be taken to be held by the transferee in trust for himself or herself and the other person as tenants in common in shares proportionate to their respective contributions; and
  - (d) on the marriage of those persons, the property or the interest shall be taken to be held by the transferee in trust for himself or herself and the other person as joint tenants.

## 11 Housekeeping allowances

If a married person makes a payment or allowance to his or her spouse to pay their joint household expenses or for similar purposes, any property bought with the payment or allowance and any money not spent from the payment or allowance shall, in the absence of any agreement to the contrary between the person and his or her spouse, be taken to belong to the person and his or her spouse as joint tenants.

**12 Married couple as beneficiaries**

For the purposes of the construction of a will, deed or other instrument in relation to a gift or other disposition of real or personal property to 2 or more persons as joint tenants or as tenants in common, any husband and his wife included among those persons shall, unless the contrary intention is shown, be treated as 2 separate persons for the purpose of calculating the share of the property to which each of the persons is entitled.

**13 Applications to decide property disputes**

If any question arises between a husband and his wife in relation to the title to, or possession or disposition of, any property (including any question in relation to the investment by one spouse of money of the other spouse without the consent of the other) the husband or wife, or a third party on whom conflicting claims are being made by the husband and wife in relation to any property, may apply to the court to hear and decide the question.

**14 Jurisdiction of Magistrates Court**

The jurisdiction of the Magistrates Court to hear and decide a question mentioned in section 13 is—

- (a) subject to the *Magistrates Court Act 1930*, section 264 (Proceedings affecting title to land); and
- (b) limited to a case where the question relates to property having a value that is not more than the amount mentioned in the *Magistrates Court Act 1930*, section 257 (1) (Personal actions at law—amount or value).

**15 Powers of the court**

- (1) In proceedings instituted by an application under section 13 in relation to property the court may, on the application of a party to the proceedings, grant an injunction restraining any person from making any threatened or apprehended transfer, assignment, sale or

other disposition of the property until the application under section 13 is heard and decided.

- (2) On the hearing of an application under section 13 in relation to property the court may make any orders in relation to the title to, or the possession or disposition of, the property it considers appropriate, and may, in particular, make orders for the sale of the property and the division of the proceeds of sale, or for the partition or division of the property.
- (3) For the purpose of giving effect to any order made in relation to property under subsection (2), the court may set aside any transfer, assignment, sale or other disposition of the property that was made with a view to defeating an existing or apprehended order in relation to the property.
- (4) When making an order in relation to property under subsection (2), the court shall have regard to the interests of, and shall make any order proper for the protection of, a person who purchased the property in good faith or any other interested person.
- (5) If an application under section 13 relates to money of the spouse of a married person that was invested by the person without the spouse's consent, the court may order that an amount equal to the amount of the money and any interest, dividend or other profit derived from the money be paid to the spouse.
- (6) If a third party referred to in section 13 makes an application under that section, the third party shall, for the purposes of the proceedings in relation to the application, be treated as a stakeholder only.
- (7) On the hearing of an application under section 13 or subsection (1), the court may direct any inquiry about the matters in question to be made in any way the court considers appropriate.
- (8) Nothing in this Act shall be taken to affect any power of the court given by any other Territory law.

## 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 *Married Persons' Property Ordinance 1986* No 18 (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).

The name of the Act was later changed to the *Married Persons Property Act 1986* under the *Legislation Act 2001*.

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

##### **Married Persons Property Act 1986 No 18**

notified 26 June 1986

commenced 26 June 1986

as amended by

##### **Magistrates Court (Civil Jurisdiction) (Amendment) Ordinance 1988 No 81 s 9**

notified 14 December 1988

commenced 3 January 1989 (s 2)

#### Legislation after becoming Territory enactment

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

notified 18 December 1995 (Gaz 1995 No S306)

amnds commenced 18 December 1995 (s 2)

## Endnotes

4 Amendment history

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### **Sexuality Discrimination Legislation Amendment Act 2004 A2004-2 sch 1 pt 1.10**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 1 pt 1.10 commenced 22 March 2004 (s 2 and CN2004-4)

### **Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.53**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.53 commenced 10 January 2005 (s 2 and see Court  
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

## 4 Amendment history

### **Name of Act**

s 1 hdg am R2 LA  
s 1 am R2 LA

### **Authority to pledge spouse's credit**

s 4 A2004-2 amdt 1.32

### **Applications to decide property disputes**

s 13 am A2004-60 amdt 1.589

### **Jurisdiction of Magistrates Court**

s 14 hdg sub A2004-60 amdt 1.590  
s 14 am 1988 No 81 s 9; 1995 No 46 sch  
sub A2004-60 amdt 1.590

### **Powers of the Court**

s 15 am A2004-60 amdt 1.591

## 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.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Ord 1988 No 81	31 July 1991
2	A1995-46	17 July 2002
3	A2004-2	22 March 2004

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