



AUSTRALIAN CAPITAL TERRITORY

# Justice and Community Safety Amendment Act 2001

No 9 of 2001

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## **An Act to amend the law relating to justice and community safety, and for other purposes**

*[Notified in ACT Gazette No 10: 8 March 2001]*

The Legislative Assembly for the Australian Capital Territory enacts  
as follows:

### **1 Name of Act**

This Act is the *Justice and Community Safety Amendment Act 2001*.

### **2 Commencement**

(1) The amendments of the *Contractors' Debts Act 1897*, other than the repeal of sections 5 and 6, made by this Act commence on a day fixed by the Minister by notice in the Gazette.

*Note 1* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

*Note 2* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

(2) The remaining provisions commence on the day this Act is notified in the Gazette.

**3 Acts amended—sch 1**

This Act amends the Acts mentioned in Schedule 1.

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**SCHEDULE 1**

(See s 3)

**AMENDMENT OF ACTS**

***Contractors' Debts Act 1897***

**[1.1] Title—**

Omit the title, substitute the following title:

“An Act to better secure the payment of debts owing to workers, tradespeople and others”.

**[1.2] Sections 1 to 4—**

Repeal the sections, substitute the following sections:

**“1 Name of Act**

This Act is the *Contractors Debts Act 1897*.

**“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 words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*contractee*—see subsection 4 (1).’ means that the word ‘contractee’ is defined in subsection 4 (1) of 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 *Interpretation Act 1967*, s 11F and s 11G).

**“3 Certificate of cause of debt**

**“(1)** This section applies if the Supreme Court or Magistrates Court finds in a proceeding that an amount is payable by a person (the *defendant*) for work done, or materials supplied, by someone else (the *plaintiff*) and the nature of the work or materials, and where the work was done or the materials supplied, appears from the evidence.

**“(2)** On application by the plaintiff, the court must give the plaintiff a certificate of the cause of debt in the approved form.

“(3) However, the court must not give a certificate for work done on a moveable chattel if it would be practicable for a person who does work on it to have a lien on it by retaining possession of it.

“(4) For this Act, a certificate under this section is conclusive evidence of the matters stated in it.”.

**[1.3] Sections 5 and 6—**

Repeal the sections.

**[1.4] Sections 7 to 19—**

Repeal the sections, substitute the following sections and dictionary:

**“4 Payment of amount owed if defendant has contract with someone else**

“(1) If an amount is, or may become, payable to the defendant (the *contractor*) under an express or implied contract with a third person (the *contractee*) in relation to the work done, or materials supplied, by the plaintiff (or part of or incidental to the work or materials), the plaintiff (if the plaintiff is owed an amount for materials, called the *tradesperson* and, in any other case, called the *worker*) may obtain payment of the amount mentioned in the certificate of the cause of debt (the *amount of the debt*) by serving on the contractee a notice of debt in the approved form, together with a copy of the certificate.

“(2) On service of the notice and copy of the certificate on the contractee, any amount that is or becomes payable to the contractor by the contractee under the contract is, to the amount of the debt, taken to have been assigned by the contractor to the worker or tradesperson.

“(3) The contractee must satisfy the amount of the debt by paying to the worker or tradesperson any amount that is or becomes payable to the contractor by the contractee under the contract.

“(4) However, the obligation to make payments to the worker or tradesperson does not begin until 7 days after service of the notice and ends when the contractee is shown a certificate of discharge for the debt in the approved form and given a copy of the certificate.

**“5 Priority of assignments**

“(1) The assignment to the worker or tradesperson is subject to any earlier assignment under this Act that is binding on the contractor and contractee at the time of service of the notice of debt on the contractee.

“(2) However, if 2 or more notices of debt are served by different people on the contractor under this Act in relation to the contractee within a period of 7 days, the notices are taken to have been served at the same time.

“(3) If notices are taken to have been served at the same time, payments of amounts owing to the contractor must be distributed among the people taken to have served a notice of debt on the contractee at the same time in proportion to the amounts mentioned in their notices of debt until the amounts are paid.

**“6 Recovery of amount assigned**

“(1) If the contractee fails to pay the amount of the debt in accordance with this Act, the worker or tradesperson may sue for and recover, in the worker or tradesperson’s own name, the amount assigned by any proceeding the contractor could have taken against the contractee if there had been no assignment under this Act.

“(2) In the proceeding, the contractee may raise any defence that would have been available against the contractor if there had been no assignment under this Act, other than a defence based on anything done by the contractee after service of the notice of debt on the contractee.

**“7 Assignment ceases to operate on satisfaction of debt etc**

“(1) All or part of the assignment under this Act of the amount of the debt ceases to operate if—

- (a) the debt is satisfied, in whole or in part, other than in accordance with this Act; or
- (b) the judgment or order for which the certificate of debt was given is set aside.

“(2) However, subsection (1) does not prejudice any honest payment or other dealing by the contractee on the basis of the assignment and the assignment continues in force to the extent necessary to support the payment or dealing if the contractee made the payment or engaged in the dealing before notice and satisfactory evidence of the satisfaction of the debt or setting aside of the judgment or order is given to the contractee.

**“8 Certificate of discharge**

**“(1)** The worker or tradesperson must sign a certificate of discharge, in the approved form, for the amount of the debt if—

- (a) the contractor or contractee pays the amount of the debt; and
- (b) the contractor or contractee asks the worker or tradesperson to do so.

**“(2)** If the worker or tradesperson refuses to sign a tendered certificate of discharge when asked to do so at the time of payment of the amount of the debt, the worker or tradesperson forfeits, and must pay to the contractor or contractee, a penalty equal to the amount of the debt.

**“(3)** A proceeding may be taken in the Magistrates Court for the recovery of the penalty.

**“9 Attachment after notice of action**

**“(1)** When, or any time after, the worker or tradesperson issues an originating process or originating summons against the defendant, the worker or tradesperson may, with the court’s leave, serve notice of the action, in the approved form, on the contractee stating the amount sued for.

**“(2)** On service of the notice, any amount payable, or that becomes payable, by the contractee to the defendant, or so much of any amount as the court orders, is attached and must remain in the hands of the contractee until the court gives judgment in the action, unless the court on the application of the contractee or defendant otherwise orders.

**“10 Application for leave to serve notice of action**

**“(1)** The worker or tradesperson may be the only party to the application to serve notice of the action.

**“(2)** The worker or tradesperson must, in the application, prove on oath or affidavit to the satisfaction of the court that the amount sued for is owing by the contractor.

**“11 Proceedings after judgment**

If the plaintiff obtains judgment against the defendant, the plaintiff must give the contractee further notice in the approved form.

**“12 Contractor to give information**

“(1) If the worker or tradesperson obtains a certificate of the cause of debt, the contractor must, if asked in writing by the worker or tradesperson, give the worker or tradesperson a certificate, in the approved form, stating the name and address of each contractee of the contractor.

Maximum penalty: 50 penalty units.

“(2) A person must not, in a certificate under subsection (1)—

- (a) state anything that the person knows is false or misleading in a material particular; or
- (b) omit anything from the certificate without which the certificate is, to the person’s knowledge, misleading in a material particular.

Maximum penalty: 50 penalty units.

**“13 Contractor liable for certain debts of subcontractor**

“(1) If the contractor sublets any part of the relevant work, the contractor is responsible to the extent provided by this Act for the wages of the workers employed by, and the materials and work supplied for, the subcontractor.

“(2) A worker employed by, or a tradesperson supplying material or work for, the subcontractor may proceed against the contractor under this Act, as if the worker or tradesperson had been directly employed by, or had directly contracted with, the contractor.

“(3) In this section:

*tradesperson*—if a person is owed an amount by someone else for work done and materials supplied by the person, the person is a *tradesperson*.

*worker*—if a person is owed an amount by someone else for work done, but not for materials supplied by the person, the person is a *worker*.

**“14 Act not taken to affect other remedies or rights under contract**

This Act does not affect—

- (a) any remedy that the worker or tradesperson may have against the contractor for the debt owing to the worker or tradesperson; or
- (b) any right under a contract or otherwise between the contractor and contractee.

**“15 Approved forms**

“(1) The Minister may approve forms for this Act.

“(2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

**“16 Effect of amendments made by Justice and Community Safety Amendment Act 2001**

“(1) The amendments of this Act made by the *Justice and Community Safety Amendment Act 2001* were made for statute law revision purposes only.

“(2) Without limiting subsection (1), it is declared that the amendments did not affect the meaning or operation of the provisions of this Act in force immediately before the making of the amendments.

“(3) This section expires 3 years after it commences.

**“17 Forms complying with omitted schedules**

“(1) For this Act—

- (a) a document in accordance with the Second Schedule is taken to be a document in the approved form for subsection 3 (2); and
- (b) a document in accordance with the Third Schedule is taken to be a document in the approved form for subsection 4 (1); and
- (c) a document in accordance with the Fourth Schedule is taken to be a document in the approved form for subsection 8 (1); and
- (d) a document in accordance with the Fifth Schedule is taken to be a document in the approved form for subsection 9 (1); and
- (e) a document in accordance with the Sixth Schedule is taken to be a document in the approved form for subsection 12 (1).

“(2) For this section, a reference to a schedule is a reference to a schedule to this Act before the commencement of this section.

“(3) This section expires 1 year after it commences.

**“DICTIONARY**

(See s 2)

*amount of the debt*—see subsection 4 (1).

*contractee*—see subsection 4 (1).

*contractor*—see subsection 4 (1).

*defendant*—see subsection 3 (1).

*plaintiff*—see subsection 3 (1).

*tradesperson*—see subsection 4 (1).

*worker*—see subsection 4 (1).”.

- [1.5] **Second, Third, Fourth, Fifth and Sixth Schedules—**  
Repeal the Schedules.

***Crimes (Forensic Procedures) Act 2000***

- [1.6] **Section 29 (1) (b) (ii) and (iii)—**  
Omit “another offence”, substitute “another serious offence”.

- [1.7] **Subsection 95 (3) (definition of *excluded forensic material*, paragraph (b))—**  
Omit “, if the suspect is subsequently convicted of the serious offence”.

***Crown Proceedings Act 1992***

- [1.8] **Sections 1 and 2—**  
Repeal the sections, substitute the following sections:

“**1 Name of Act**  
This Act is the *Crown Proceedings Act 1992*.”.

“**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 words and expressions used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).”.

- [1.9] **Subsection 3 (1) (definitions of *Chief Solicitor* and *Government Solicitor*)—**  
Omit the definitions.

- [1.10] **Subsection 3 (1)—**  
Relocate the remaining definitions to the dictionary.



**[1.11] Remainder of section 3—**

Repeal the remainder of the section.

**[1.12] Section 12—**

Insert at the end the following subsection:

“(3) In this section:

*carrying on a business* does not include imposing or collecting—

- (a) taxes; or
- (b) levies; or
- (c) fees for licences, permits or any other form of authority.

*Territory authority* means a body corporate established by an Act, but does not include a body declared under section 3A of the *Financial Management Act 1996* not to be a Territory authority.

*Territory Crown* does not include a Territory authority so far as the authority carries on business.”.

**[1.13] Subsection 19 (1)—**

Omit “legal practitioner”, substitute “lawyer”.

**[1.14] Sections 21 and 22—**

Repeal the sections, substitute the following section:

**“21 Regulation-making power**

“(1) The Executive may make regulations for this Act.

“(2) The regulations may make provision with respect to—

- (a) the details to be stated or to accompany process served on the Territory Crown; and
- (b) the service of process or other documents under this Act.”.

**[1.15] Dictionary—**

Insert at the end the following dictionary:

**“DICTIONARY**

(See s 2)

*chief solicitor* means the person performing the duties of Chief Solicitor in the public service.”.

***Interpretation Act 1967***

**[1.16] Dictionary (definition of *Attorney-General*)—**

Omit the definition, substitute the following definition:

“***Attorney-General*** means the Minister designated Attorney-General by the Chief Minister, and includes a Minister authorised by the Chief Minister to act on behalf of the Attorney-General.”.

**[1.17] Dictionary (definition of *Treasurer*)—**

Omit the definition, substitute the following definition:

“***Treasurer*** means the Minister designated Treasurer by the Chief Minister, and includes a Minister authorised by the Chief Minister to act on behalf of the Treasurer.”.

***Justices of the Peace Act 1989***

**[1.18] New section 4A—**

After section 4, insert the following section:

**“4A Use and disclosure of information about justices of the peace**

**“(1)** This section applies to the personal information of a justice of the peace.

**“(2)** The Minister may authorise—

- (a) the use of the information to give justices of the peace in the ACT information about the A.C.T. Justices of the Peace Association Incorporated (the ***association***); and
- (b) the disclosure of the information to the association to help it in circulating information about services that may be given by justices of the peace in the ACT.

**“(3)** In this section:

***personal information***, of a justice of the peace, means the justice’s name and contact details.”.

***Partnership Act 1963***

**[1.19] Sections 1 to 4—**

Repeal the sections, substitute the following sections:

**“1 Name of Act**

This Act is the *Partnership Act 1963*.”.

**“2 Meaning of *business***

In this Act:

*business* includes a trade, occupation or profession.”.

**[1.20] Section 14—**

Repeal the section, substitute the following section:

**“14 Liability of firm for wrongs**

**“(1)** This section applies if, by any wrongful act or omission of a partner (the *relevant partner*) in a firm acting in the ordinary course of the business of the firm, or with the authority of the other partners in the firm—

- (a) loss or injury is caused to someone who is not a partner in the firm;  
or
- (b) a penalty is incurred.

**“(2)** The firm is liable in relation to the loss, injury or penalty to the same extent as the relevant partner.

**“(3)** For this section, a partner who commits a wrongful act or omission as a director of a body corporate (within the meaning of the Corporations Law), as a member of a Territory authority, or as a member of the board (however described) of a Territory authority, is not to be taken to be acting in the ordinary course of business of the firm, or with the authority of the other partners in the firm, only because of 1 or more of the following:

- (a) the partner obtained the agreement or authority of the other partners in the firm, or some of them, to be appointed or to act as director or member;
- (b) the remuneration that the partner receives as director or member forms part of the income of the firm;
- (c) any other partner of the firm is also such a director or member, whether of the same or a different body corporate, Territory authority or board.”.

**[1.21] Subsection 28 (2)—**

Omit “Court”, substitute “Supreme Court”.

**[1.22] Heading to section 40—**

Omit “Court”, substitute “Supreme Court”.

**[1.23] Paragraph 40 (1) (a)—**

Omit the paragraph, substitute the following paragraph:

“(a) a partner in a firm—

- (i) has been declared in accordance with law to be a person with a mental disability; or
- (ii) is shown, to the satisfaction of the Supreme Court, to be a person with a mental disability; or”.

**[1.24] Section 40—**

Insert at the end the following subsection:

“(4) In this section:

*person with a mental disability*, in relation to a partnership agreement, means a person who is not legally competent to be a party to the partnership agreement, and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.”.

**[1.25] Subsection 45 (2)—**

Omit “Court”, substitute “Supreme Court”.

**[1.26] Section 46—**

Omit “Court”, substitute “Supreme Court”.

**[1.27] Paragraph 48 (1) (c)—**

Omit “Court”, substitute “Supreme Court”.

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**Penalty units**

Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

*[Presentation speech made in Assembly on 7 December 2000]*