



Australian Capital Territory

# **Defamation (Criminal Proceedings) Act 2001 No 88**

**Republication No 3**

**Effective: 1 November 2002**

Republication date: 1 November 2002

Last amendment made by Act 2002 No 40

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Defamation (Criminal Proceedings) Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 November 2002. It also includes any amendment, repeal or expiry affecting the republished law to 1 November 2002.

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

# Defamation (Criminal Proceedings) Act 2001

## Contents

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	Page	
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
3	Dictionary	2
4	Notes	2
<b>Part 4</b>	<b>Criminal proceedings</b>	
<b>Division 4.1</b>	<b>Defamatory libel</b>	
27	Application of div 4.1	3
28	Meaning of <i>victim</i> in div 4.1	3
29	Malicious publication of defamatory libel (1901 s 11 and s 12)	3
30	Beginning of prosecution (1909 s 4)	3

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Defamation (Criminal Proceedings) Act 2001

contents 1

## Contents

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	Page	
31	Publication of matters of public concern (1909 s 5)	4
32	Publication under contract (1909 s 6)	4
33	Plea of truth and public benefit (1901 s 13)	5
34	Effect of plea and evidence (1901 s 14)	5
35	Truth as a defence (1901 s 15)	5
36	Plea of not guilty (1901 s 16)	6
37	Defence of absence of authority, knowledge etc (1901 s 17)	6
38	Defence—defendant not negligent	6
<b>Division 4.2      Other libels and related offences</b>		
39	Libel etc with intent to extort money or obtain a benefit (1901 s 10)	7
<b>Part 5              Miscellaneous</b>		
40	Scope of defences not limited	8
<b>Dictionary</b>		9
<b>Endnotes</b>		
1	About the endnotes	14
2	Abbreviation key	14
3	Legislation history	15
4	Amendment history	15
5	Earlier republications	18



Australian Capital Territory

# **Defamation (Criminal Proceedings) Act 2001**

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An Act about criminal proceedings for defamation, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Defamation (Criminal Proceedings) Act 2001*.

### 3 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 *Legislation Act 2001*, s 155 and s 156 (1)).

### 4 Notes

(1) A note in this Act is explanatory and is not part of this Act.

(2) In this section—

**note** includes material enclosed in brackets in section headings.

*Note* For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- 1901: *Defamation Act 1901*
- 1909: *Defamation (Amendment) Act 1909*
- UK: *Defamation Act 1996* (UK)

(3) Subsection (2), the notes mentioned in subsection (2), and this subsection expire 3 years after this section commences.

## **Part 4**                      **Criminal proceedings**

### **Division 4.1**              **Defamatory libel**

#### **27**      **Application of div 4.1**

This division applies in relation to a prosecution for the malicious publication of a defamatory libel.

#### **28**      **Meaning of *victim* in div 4.1**

In this division:

*victim*, in relation to matter that has been published, means the person, or any of the persons, who is or may be defamed by the matter.

#### **29**      **Malicious publication of defamatory libel (1901 s 11 and s 12)**

A person must not maliciously publish a defamatory libel (whether or not the person knows it is false).

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

#### **30**      **Beginning of prosecution (1909 s 4)**

- (1) A prosecution may only be begun with the order of a judge.
- (2) An application for an order may only be made on notice to the person accused.
- (3) The person accused must be given an opportunity of being heard against the application.

**31 Publication of matters of public concern (1909 s 5)**

(1) It is a defence if the defendant establishes that the publication by the defendant was—

- (a) a fair report of a proceeding of public concern; or
- (b) a fair copy of a public document or a fair summary of, or a fair extract from, a public document;

made by the defendant in good faith for the information of the public.

(2) For subsection (1), if a report or other document under the law of a country would be a public document except for compliance with a provision of that law about—

- (a) the form of the report or document; or
- (b) the content of the report or document; or
- (c) the time within which the report or document is prepared, or presented, submitted, tabled or laid to or before an entity;

the report or document is a public document despite the noncompliance.

**32 Publication under contract (1909 s 6)**

(1) It is a defence if the defendant establishes that the publication by the defendant was a reasonable publication under a contract.

(2) For subsection (1), a publication is reasonable if—

- (a) the publication was in answer to an inquiry made under the contract; and
- (b) the matter published was relevant to the subject of the inquiry; and
- (c) the manner and extent of the publication were reasonable; and

- (d) the defendant was not motivated by ill will to the victim, or by any other improper motive; and
- (e) the defendant had, at the time of publication, reasonable grounds to believe the matter to be true.

**33 Plea of truth and public benefit (1901 s 13)**

- (1) The defendant may only give evidence of the truth of the matter charged as a defence if the defendant, in pleading to the indictment or information, alleges—
  - (a) that it was for the public benefit that the matter should be published; and
  - (b) the facts that provide the basis for the public benefit; and
  - (c) the truth of the facts.
- (2) If the defendant pleads as provided in subsection (1), the truth of the matters charged may be inquired into, but is a defence only if it was for the public benefit that the matter should be published.
- (3) The prosecutor may reply generally to the plea by denying the whole of it.

**34 Effect of plea and evidence (1901 s 14)**

If the defendant is convicted after pleading as provided in section 33, the court in sentencing the defendant may consider whether the guilt of the defendant is aggravated or mitigated by the plea and by the evidence given to prove or to disprove the plea.

**35 Truth as a defence (1901 s 15)**

The truth of the matters charged in the alleged libel may only be inquired into if the defendant has pleaded as provided in section 33.

**36 Plea of not guilty (1901 s 16)**

In addition to the plea provided for in section 33, the defendant may plead not guilty.

**37 Defence of absence of authority, knowledge etc (1901 s 17)**

If, at a trial, evidence is given under the plea of not guilty that establishes a presumptive case of publication against the defendant by someone under the defendant's authority, the defendant may prove that the publication was made without the defendant's authority, consent, or knowledge, and did not arise from lack of appropriate care or caution by the defendant.

**38 Defence—defendant not negligent**

- (1) It is a defence in relation to the publication of matter that is or may be defamatory (other than any matter imputing criminal behaviour) if the defendant establishes that he or she was not negligent in publishing the matter.
- (2) For subsection (1), it is sufficient if the defendant establishes—
  - (a) that if the victim had proceeded against the defendant in an action for negligence—
    - (i) the defendant would not have owed a duty of care to the victim; or
    - (ii) the defendant would not have breached a duty of care owed to the victim; or
  - (b) that, because of the publication, the victim did not suffer or is not likely to suffer harm; or
  - (c) the defendant took reasonable steps to ensure the accuracy of the publication.

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## Division 4.2                      Other libels and related offences

### 39      **Libel etc with intent to extort money or obtain a benefit** (1901 s 10)

- (1) A person must not publish, or threaten to publish, a libel with intent to extort money or to induce or procure an appointment.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (2) A person must not directly or indirectly threaten to print or publish anything affecting a person with intent to extort money or to induce or procure an appointment.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (3) A person must not directly or indirectly propose to abstain from printing or publishing anything affecting a person with intent to extort money or to induce or procure an appointment.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (4) A person must not directly or indirectly offer to prevent the printing or publishing of anything affecting a person with intent to extort money or to induce or procure an appointment.

Maximum penalty: 300 penalty units, imprisonment for 3 years or both.

- (5) This section does not affect any other law relating to the sending or giving of threatening letters or writings.

- (6) In this section:

***appointment*** includes an office of profit or trust.

***money*** includes security for money or valuable thing.

## **Part 5                      Miscellaneous**

### **40      Scope of defences not limited**

A defence under this Act is additional to any other defence available to the defendant and does not limit any other defence.

## Dictionary

(see s 3)

***Australian jurisdiction*** means the Territory, the Commonwealth or a State or another Territory.

***Australian record or document*** means a record or document kept—

- (a) by an Australian jurisdiction; or
- (b) by a statutory authority of an Australian jurisdiction; or
- (c) by a court of an Australian jurisdiction; or
- (d) under legislation of an Australian jurisdiction.

***country*** includes a federation, and a state, territory, province or other part of a federation.

***entity*** includes a parliamentary body.

***judgment*** includes a decree, order or sentence.

***law reform body*** means a body (however described and whether or not permanent or full-time) whose functions in relation to the law of a country are similar to those of the Australian Law Reform Commission in relation to the law of the Commonwealth.

***learned society*** means a body, wherever formed—

- (a) the objects of which include the advancement of any art, science or religion or the advancement of learning in any field (the ***principal objects***); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with its principal objects; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

**ombudsman** includes an officer (however described) whose duties are similar to those of the Territory ombudsman.

**parliamentary body** means any of the following:

- (a) a parliament or legislature of any country;
- (b) a house of a parliament or legislature of any country;
- (c) a committee of a parliament or legislature of any country;
- (d) a committee of a house or houses of a parliament or legislature of any country.

**proceeding of public concern** means any of the following:

- (a) a proceeding in public of a parliamentary body;
- (b) a proceeding in public of an international organisation of any countries or of governments of any countries;
- (c) a proceeding in public of an international conference at which governments of any countries are represented;
- (d) a proceeding in public of—
  - (i) the International Court of Justice, or any other judicial or arbitral tribunal, for the decision of any matter in dispute between nations; or
  - (ii) any other international judicial or arbitral tribunal;
- (e) a proceeding in public of—
  - (i) a court of any country; or
  - (ii) an arbitral tribunal;
- (f) a proceeding in public of an inquiry held under the law of any country or under the authority of the government of any country;
- (g) a proceeding of a learned society, or of a committee or governing body of the society, under its principal objects if the

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proceeding relates to a decision or adjudication made in Australia particularly concerning—

- (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the society;
- (h) a proceeding of a sport or recreation association, or of a committee or governing body of the association, under its major objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
- (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the association;
- (i) a proceeding of a trade association, or of a committee or governing body of the association, under its relevant objects if the proceeding relates to a decision or adjudication made in Australia particularly concerning—
- (i) a member or members of the society; or
  - (ii) a person subject by contract or otherwise by law to control by the association;
- (j) a proceeding of a public meeting (with or without restriction on the people attending) held anywhere in Australia if the proceeding relates to a matter of public interest, including the advocacy or candidature of a person for public office;
- (k) a proceeding of an ombudsman of any country if the proceeding relates to a report of the ombudsman;
- (l) a proceeding in public of a law reform body of any country, or a proceeding in public at an inquiry conducted by a law reform body of any country.

**publication**, of matter, includes publication in a way that the matter will become accessible or will be broadcast or sent to other people through a computer network.

**public document** means any of the following:

- (a) a report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published under the authority of the body;
- (b) a judgment of a court of any country in a civil proceeding, or a record of the court relating to the judgment or to its enforcement or satisfaction;
- (c) a report, or other document, that under the law of any country—
  - (i) is authorised to be published; or
  - (ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body;
- (d) a document issued by the government or a local government of a country, or by an officer, employee or agency of the country or local government, for the information of the public;
- (e) an Australian record or document that is open to inspection by the public;
- (f) a report of a tribunal about its decision and the reasons for its decision.

**sport or recreation association** means a body, wherever formed—

- (a) the objects of which include the promotion of any game, sport, or pastime to the playing of which or exercise of which the public is admitted as spectators or otherwise and the promotion or protection of the interests of people connected with the game, sport, or pastime (the **major objects**); and
- (b) authorised by its constitution—

- (i) to exercise control over, or adjudicate on, matters connected with the game, sport, or pastime; and
- (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

**trade association** means a body, wherever formed—

- (a) the objects of which include the promotion of any calling, that is to say, a trade, business, industry or profession and the promotion or protection of the interests of people engaged in any calling (the *relevant objects*); and
- (b) authorised by its constitution—
  - (i) to exercise control over, or adjudicate on, matters connected with a calling or the conduct of people engaged in the calling; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Australia.

**tribunal** means a tribunal of any country.

**victim**, for division 4.1 (Defamatory libel)—see section 28.

## 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.

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

### 3 Legislation history

The *Defamation (Criminal Proceedings) Act 2001* was originally the *Defamation Act 2001*. It was renamed by the *Civil Law (Wrongs) Act 2002* (see amdt 3.7).

#### **Defamation (Criminal Proceedings) Act 2001 No 88**

notified LR 24 September 2001

s 1, s 2 commenced 24 September 2001 (LA s 75)

remainder commenced 1 July 2002 (s 2)

as amended by

#### **Statute Law Amendment Act 2002 No 30 pt 3.16**

notified LR 16 September 2002

s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))

pt 3.16 commenced 17 September 2002 (s 2 (1))

#### **Civil Law (Wrongs) Act 2002 No 40 div 3.2.4**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

div 3.2.4 commenced 1 November 2002 (s 2 (2) and CN2002-13)

### 4 Amendment history

#### **Title**

title sub 2002 No 40 amdt 3.6

#### **Name of Act**

s 1 sub 2002 No 40 amdt 3.7

#### **Commencement**

s 2 om LA s 89 (4)

#### **Dictionary**

s 3 sub 2002 No 40 amdt 3.8

#### **Notes**

s 4 s 4 (2), (3) exp 1 July 2005 (s 4 (3))

#### **Resolution of disputes without litigation**

pt 2 hdg om 2002 No 40 amdt 3.9

#### **Application of pt 2**

s 5 om 2002 No 40 amdt 3.9

#### **Offer to make amends**

s 6 om 2002 No 40 amdt 3.9

## Endnotes

4 Amendment history

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**What is a reasonable offer to make amends?**

s 7 om 2002 No 40 amdt 3.9

**Acceptance of offer to make amends**

s 8 om 2002 No 40 amdt 3.9

**False or misleading statement in correction**

s 9 om 2002 No 40 amdt 3.9

**Offer to make amends not accepted**

s 10 om 2002 No 40 amdt 3.9

**Order to vindicate reputation if offer not made**

s 11 om 2002 No 40 amdt 3.9

**Rules governing litigation of civil claims**

pt 3 hdg om 2002 No 40 amdt 3.9

**Application of pt 3**

s 12 om 2002 No 40 amdt 3.9

**Meaning of published matter in pt 3**

s 13 om 2002 No 40 amdt 3.9

**Slander actionable without special damage**

s 14 om 2002 No 40 amdt 3.9

**Plaintiff's character not likely to be injured**

s 15 om 2002 No 40 amdt 3.9

**Defence of truth and public benefit**

s 16 om 2002 No 40 amdt 3.9

**Publication of a proceeding of public concern**

s 17 am 2002 No 30 amdt 3.209  
om 2002 No 40 amdt 3.9

**Publication of public document**

s 18 am 2002 No 30 amdt 3.210, amdt 3.211  
def *publication* ins 2002 No 30 amdt 3.212  
om 2002 No 40 amdt 3.9

**Publication under contract**

s 19 om 2002 No 40 amdt 3.9

**Evidence of apology admissible in mitigation**

s 20 om 2002 No 40 amdt 3.9

**Payment into court**

s 21 om 2002 No 40 amdt 3.9

**Defence of apology and payment into court**

s 22 om 2002 No 40 amdt 3.9

**Defence—defendant not negligent**

s 23 om 2002 No 40 amdt 3.9

**Compensation etc provable in mitigation**

s 24 om 2002 No 40 amdt 3.9

**Damages**

s 25 om 2002 No 40 amdt 3.9

**Disclosure of name of contributor**

s 26 om 2002 No 40 amdt 3.9

**Malicious publication of defamatory libel**

s 29 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Beginning of prosecution**

s 30 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Publication of matters of public concern**

s 31 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

s 31 am 2002 No 30 amdt 3.213; 2002 No 40 amdt 3.10

**Publication under contract**

s 32 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Plea of truth and public benefit**

s 33 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Effect of plea and evidence**

s 34 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Truth as a defence**

s 35 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Plea of not guilty**

s 36 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Defence of absence of authority, knowledge etc**

s 37 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Libel etc with intent to extort money or obtain a benefit**

s 39 hdg [bracketed note exp 1 July 2005 \(s 4 \(3\)\)](#)

**Time not to be enlarged except by leave**

s 41 om 2002 No 40 amdt 3.11

**Review of certain provisions of Act**

s 42 om 2002 No 40 amdt 3.11

**Repeal and consequential amendments**

s 43 om LA s 89 (3)

## Endnotes

### 5 Earlier republications

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#### Dictionary

dict	am 2002 No 30 amdt 3.214
	sub 2002 No 40 amdt 3.12
	def <b>action</b> om 2002 No 40 amdt 3.12
	def <b>aggrieved person</b> om 2002 No 40 amdt 3.12
	def <b>amends agreement</b> om 2002 No 40 amdt 3.12
	def <b>Australian jurisdiction</b> ins 2002 No 40 amdt 3.12
	def <b>Australian record or document</b> ins 2002 No 40 amdt 3.12
	def <b>country</b> sub 2002 No 40 amdt 3.12
	def <b>court</b> om 2002 No 40 amdt 3.12
	def <b>defamation</b> om 2002 No 40 amdt 3.12
	def <b>entity</b> ins 2002 No 40 amdt 3.12
	def <b>judgment</b> ins 2002 No 40 amdt 3.12
	def <b>law reform body</b> ins 2002 No 40 amdt 3.12
	def <b>learned society</b> ins 2002 No 40 amdt 3.12
	def <b>matter in question</b> om 2002 No 40 amdt 3.12
	def <b>offer to make amends</b> om 2002 No 40 amdt 3.12
	def <b>ombudsman</b> ins 2002 No 40 amdt 3.12
	def <b>parliamentary body</b> sub 2002 No 40 amdt 3.12
	def <b>proceeding of public concern</b> ins 2002 No 40 amdt 3.12
	def <b>publication</b> ins 2002 No 40 amdt 3.12
	def <b>public document</b> ins 2002 No 40 amdt 3.12
	def <b>published matter</b> om 2002 No 40 amdt 3.12
	def <b>publisher</b> om 2002 No 40 amdt 3.12
	def <b>qualified offer</b> om 2002 No 40 amdt 3.12
	def <b>sport or recreation association</b> ins 2002 No 40 amdt 3.12
	def <b>trade association</b> ins 2002 No 40 amdt 3.12
	def <b>tribunal</b> sub 2002 No 40 amdt 3.12
	def <b>victim</b> sub 2002 No 40 amdt 3.12

## 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	1 July 2002
2	Act 2002 No 30	27 September 2002

Authorised by the ACT Parliamentary Counsel—also accessible at  
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