



Australian Capital Territory

# **British Law Ascertainment Act 1859 22 and 23 Vic c 63**

## **Republication No 1**

Republication date: 5 July 2002

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *British Law Ascertainment Act 1859* 22 and 23 Vic c 63 as in force on 5 July 2002. It includes any commencement, repeal or expiry affecting the republished law and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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 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.



Australian Capital Territory

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## Contents

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	Page
1 Courts in one part of Her Majesty's dominions may remit case for the opinion in law of court in any other part	2
2 Certified copies of opinion to be given	3
3 Opinion to be applied by court making remit etc	3
5 Definitions for Act	4

## Endnotes

1 About the endnotes	5
2 Abbreviation key	5
3 Legislation history	6
4 Amendment history	7

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Australian Capital Territory

## **British Law Ascertainment Act 1859 22 and 23 Vic c 63**

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An Act to afford facilities for the more certain ascertainment of the law administered in one part of Her Majesty's Dominions when pleaded in the courts of another part

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**1 Courts in one part of Her Majesty's dominions may remit case for the opinion in law of court in any other part**

- (1) If, in any action pending in any court within Her Majesty's dominions, it shall be the opinion of the court that it is necessary or expedient for the proper disposal of the action to ascertain the law applicable to the facts of the case as administered in any other part of Her Majesty's dominions on any point on which the law of the other part of Her Majesty's dominions is different from that in which the court is situated, it shall be competent to the court in which the action is pending to direct a case to be prepared setting out the facts, as these may be ascertained by verdict of a jury or other mode competent, or may be agreed on by the parties, or settled by the person that may have been appointed by the court for that purpose in the event of the parties not agreeing.
- (2) On the case being approved of by the court or a judge of it, the court shall settle the questions of law arising out of the action on which it desires to have the opinion of the other court, and shall pronounce an order remitting the questions, together with the case, to the court in the other part of Her Majesty's dominions, being one of the superior courts of the other part, whose opinion is desired on the law administered by that court as applicable to the facts set out in the case, and desiring that court to pronounce its opinion on the questions submitted to it in the terms of the Act.
- (3) It shall be competent to any of the parties to the action to present a petition to the court whose opinion is to be obtained, praying the court to hear parties or their counsel, and to pronounce its opinion on the petition in terms of this Act, or to pronounce its opinion without hearing parties or counsel.
- (4) The court to which the petition shall be presented shall, if the court considers appropriate, appoint an early day for hearing parties or their counsel on the case, and shall afterwards pronounce its opinion

on the questions of law as administered by the court that are submitted to it.

- (5) To pronounce the opinion the court shall be entitled to take the further procedure that shall seem proper.

## **2 Certified copies of opinion to be given**

On the opinion being pronounced, a copy of it, certified by an officer of the court, shall be given to each of the parties to the action by whom the opinion shall be required, and shall be deemed and held to contain a correct record of the opinion.

## **3 Opinion to be applied by court making remit etc**

- (1) It shall be competent to any of the parties to the action, after having obtained the certified copy of the opinion, to lodge it with an officer of the court in which the action may be pending, who may have the official charge of it, together with a notice of motion, setting out that the party will, on a day named in the notice, move the court to apply the opinion contained in the certified copy to the facts set out in the case previously specified.
- (2) The court shall thereupon apply the opinion to the facts, in the same way as if the opinion had been pronounced by the court itself on a case reserved for opinion of the court, or on special verdict of a jury.
- (3) Alternatively, the court shall, if it considers appropriate, if the opinion has been obtained before trial, order the opinion to be submitted to the jury with the other facts of the case as evidence, or conclusive evidence, as the court considers appropriate, of the foreign law stated in the opinion, and the opinion shall be so submitted to the jury.

## 5 Definitions for Act

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

In this Act:

**action** includes every judicial proceeding instituted in any court, civil, criminal or ecclesiastical.

**superior court** includes—

- (a) in England—the Superior Courts of Law at Westminster, the Lord Chancellor, the Lords Justices, the Master of the Rolls or any Vice Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial Causes, and the Judge of the Court of Probate; and
- (b) in Scotland—the High Court of Justiciary, and the Court of Session acting by either of its divisions; and
- (c) in Ireland—the Superior Courts of Law at Dublin, the Master of the Rolls, and the Judge of the Admiralty Court; and
- (d) in any other part of Her Majesty's dominions—the Superior Courts of Law or Equity in that part.

## 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	



### 3 Legislation history

This Act was originally a UK Act—British Law Ascertainment Act, 1859 22 and 23 Vic c 63 (UK). The Act was renamed as the *British Law Ascertainment Act 1859* when it was first republished under the *Legislation Act 2001*.

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4 the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former UK laws 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).

Under the *Interpretation Act 1967* (repealed), s 65 all former UK Acts in force in the ACT immediately before 10 November 1999 (including this Act) became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former UK Acts fully into ACT laws.

#### **British Law Ascertainment Act 1859 22 and 23 Vic c 63**

as amended by

#### **Imperial Acts Application Act 1986 No 93 s 5 and sch 3 pt 22**

notified 12 January 1987 (Cwlth Gaz 1986 No S1)

s 5 and sch 3 pt 22 commenced 12 January 1987 ( s 2 (1))

#### 4 Amendment history

The *Imperial Acts Application Act 1986* (the **1986 Act**), sch 3, pt 22 set out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT (see 1986 Act, s 5 (1), (4) and (5)).

Section 4 was omitted by the 1986 Act. It created certain rights of appeal to the Privy Council or House of Lords and may have ceased operation in the ACT under the *Privy Council (Limitation of Appeals) Act 1968* (Cwlth), the *Privy Council (Appeals from the High Court) Act 1975* (Cwlth) or the *Australia Act 1986* (Cwlth).

This Act has not been amended since the enactment of the 1986 Act, except under the *Legislation Act 2001*.

**Name of Act**

am R1 LA

**Courts in one part of Her Majesty's dominions may remit case for the opinion in law of court in any other part**

s 1 ss num R1 LA

**Opinion to be applied by court making remit etc**

s 3 ss num R1 LA

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