

**Reprint  
as at 1 September 2017**



## **Contracts (Privity) Act 1982**

Public Act      1982 No 132  
Date of assent      16 December 1982  
Commencement      see section 1(2)

Contracts (Privity) Act 1982: repealed, on 1 September 2017, by section 345(1)(b) of the Contract and Commercial Law Act 2017 (2017 No 5).

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

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**An Act to permit a person who is not a party to a deed or contract to enforce a promise made in it for the benefit of that person**

**1 Short Title and commencement**

- (1) This Act may be cited as the Contracts (Privity) Act 1982.
- (2) This Act shall come into force on 1 April 1983.

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**benefit** includes—

- (a) any advantage; and
- (b) any immunity; and
- (c) any limitation or other qualification of—
  - (i) an obligation to which a person (other than a party to the deed or contract) is or may be subject; or
  - (ii) a right to which a person (other than a party to the deed or contract) is or may be entitled; and
- (d) any extension or other improvement of a right or rights to which a person (other than a party to the deed or contract) is or may be entitled

**beneficiary**, in relation to a promise to which section 4 applies, means a person (other than the promisor or promisee) on whom the promise confers, or purports to confer, a benefit

**contract** includes a contract made by deed or in writing, or orally, or partly in writing and partly orally or implied by law

**court** means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined

**promisee**, in relation to a promise to which section 4 applies, means a person who is both—

- (a) a party to the deed or contract; and
- (b) a person to whom the promise is made or given

**promisor**, in relation to a promise to which section 4 applies, means a person who is both—

- (a) a party to the deed or contract; and

(b) a person by whom the promise is made or given.

Section 2 **court**: substituted, on 19 December 2002, by section 3 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

### **3 Act to bind the Crown**

This Act shall bind the Crown.

### **4 Deeds or contracts for the benefit of third parties**

Where a promise contained in a deed or contract confers, or purports to confer, a benefit on a person, designated by name, description, or reference to a class, who is not a party to the deed or contract (whether or not the person is in existence at the time when the deed or contract is made), the promisor shall be under an obligation, enforceable at the suit of that person, to perform that promise:

provided that this section shall not apply to a promise which, on the proper construction of the deed or contract, is not intended to create, in respect of the benefit, an obligation enforceable at the suit of that person.

### **5 Limitation on variation or discharge of promise**

(1) Subject to sections 6 and 7, where, in respect of a promise to which section 4 applies,—

- (a) the position of a beneficiary has been materially altered by the reliance of that beneficiary or any other person on the promise (whether or not that beneficiary or that other person has knowledge of the precise terms of the promise); or
- (b) a beneficiary has obtained against the promisor judgment upon the promise; or
- (c) a beneficiary has obtained against the promisor the award of an arbitral tribunal upon a submission relating to the promise,—

the promise and the obligation imposed by that section may not be varied or discharged without the consent of that beneficiary.

(2) For the purposes of paragraph (b) or paragraph (c) of subsection (1),—

- (a) an award of an arbitral tribunal or a judgment shall be deemed to be obtained when it is pronounced notwithstanding that some act, matter, or thing needs to be done to record or perfect it or that, on application to a court or on appeal, it is varied:
- (b) an award of an arbitral tribunal or a judgment set aside on application to a court or on appeal shall be deemed never to have been obtained.

Section 5(1)(c): amended, on 19 December 2002, by section 4 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

Section 5(2)(a): amended, on 19 December 2002, by section 4 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

Section 5(2)(b): amended, on 19 December 2002, by section 4 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

## **6 Variation or discharge of promise by agreement or in accordance with express provision for variation or discharge**

Nothing in this Act prevents a promise to which section 4 applies or any obligation imposed by that section from being varied or discharged at any time—

- (a) by agreement between the parties to the deed or contract and the beneficiary; or
- (b) by any party or parties to the deed or contract if—
  - (i) the deed or contract contained, when the promise was made, an express provision to that effect; and
  - (ii) the provision is known to the beneficiary (whether or not the beneficiary has knowledge of the precise terms of the provision); and
  - (iii) the beneficiary had not materially altered his position in reliance on the promise before the provision became known to him; and
  - (iv) the variation or discharge is in accordance with the provision.

## **7 Power of court to authorise variation or discharge**

- (1) Where, in the case of a promise to which section 4 applies or of an obligation imposed by that section,—
  - (a) the variation or discharge of that promise or obligation is precluded by section 5(1)(a); or
  - (b) it is uncertain whether the variation or discharge of that promise is so precluded,—

a court, on application by the promisor or promisee, may, if it is just and practicable to do so, make an order authorising the variation or discharge of the promise or obligation or both on such terms and conditions as the court thinks fit.

- (2) If a court—
  - (a) makes an order under subsection (1); and
  - (b) is satisfied that the beneficiary has been injuriously affected by the reliance of the beneficiary or any other person on the promise or obligation,—

the court shall make it a condition of the variation or discharge that the promisor pay to the beneficiary, by way of compensation, such sum as the court thinks just.

## 8 Enforcement by beneficiary

The obligation imposed on a promisor by section 4 may be enforced at the suit of the beneficiary as if he were a party to the deed or contract, and relief in respect of the promise, including relief by way of damages, specific performance, or injunction, shall not be refused on the ground that the beneficiary is not a party to the deed or contract in which the promise is contained or that, as against the promisor, the beneficiary is a volunteer.

## 9 Availability of defences

- (1) This section applies only where, in proceedings brought in a court, a claim is made in reliance on this Act by a beneficiary against a promisor.
- (2) Subject to subsections (3) and (4), the promisor shall have available to him, by way of defence, counterclaim, set-off, or otherwise, any matter which would have been available to him—
  - (a) if the beneficiary had been a party to the deed or contract in which the promise is contained; or
  - (b) if—
    - (i) the beneficiary were the promisee; and
    - (ii) the promise to which the proceedings relate had been made for the benefit of the promisee; and
    - (iii) the proceedings had been brought by the promisee.
- (3) The promisor may, in the case of a set-off or counterclaim arising by virtue of subsection (2) against the promisee, avail himself of that set-off or counterclaim against the beneficiary only if the subject matter of that set-off or counterclaim arises out of or in connection with the deed or contract in which the promise is contained.
- (4) Notwithstanding subsections (2) and (3), in the case of a counterclaim brought under either of those subsections against a beneficiary,—
  - (a) the beneficiary shall not be liable on the counterclaim, unless the beneficiary elects, with full knowledge of the counterclaim, to proceed with his claim against the promisor; and
  - (b) if the beneficiary so elects to proceed, his liability on the counterclaim shall not in any event exceed the value of the benefit conferred on him by the promise.

Section 9(1): amended, on 19 December 2002, by section 5 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

## 10 Jurisdiction of District Courts

*[Repealed]*

Section 10: repealed, on 19 December 2002, by section 6 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

## 11 Jurisdiction of Disputes Tribunals

*[Repealed]*

Section 11: repealed, on 19 December 2002, by section 6 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

## 12 Amendments of Arbitration Act 1908

*[Repealed]*

Section 12: repealed, on 1 July 1997, by section 18 of the Arbitration Act 1996 (1996 No 99).

## 13 Repeal

*[Repealed]*

Section 13: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## 13A Act does not apply to promises, contracts, or deeds governed by foreign law

This Act does not apply to any promise, contract, or deed, or any part of any promise, contract, or deed, that is governed by a law other than New Zealand law.

Section 13A: inserted, on 19 December 2002, by section 7 of the Contracts (Privity) Amendment Act 2002 (2002 No 77).

## 14 Savings

- (1) Nothing in this Act limits or affects—
  - (a) any right or remedy that exists or is available apart from this Act; or
  - (b) subpart 2 of Part 2 of the Property Law Act 2007 or any other enactment that requires any contract to be in writing or to be evidenced by writing; or
  - (c) the law of agency; or
  - (d) the law of trusts.
- (2) Subsection (1) is subject to the repeal of section 7 of the Property Law Act 1952 effected by section 13 of this Act.
- (3) Section 7 of the Property Law Act 1952 continues to apply, despite its repeal effected by section 13 of this Act, in respect of any deed made before 1 April 1983.

Section 14: substituted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## 15 Application of Act

- (1) This Act does not apply to any promise, contract, or deed made before 1 April 1983.
- (2) Subsection (1) is subject to section 14(3).

Section 15: substituted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## Reprints notes

### **1** *General*

This is a reprint of the Contracts (Privity) Act 1982 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 345(1)(b)

Property Law Act 2007 (2007 No 91): section 364(1)

Contracts (Privity) Amendment Act 2002 (2002 No 77)

Arbitration Act 1996 (1996 No 99): section 18