

NORTHERN TERRITORY OF AUSTRALIA

WORKMEN'S LIENS ACT

As in force at 15 July 2002

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 15 July 2002

WORKMEN'S LIENS ACT

An Act to []

1 Short title

This Act may be cited as the *Workmen's Liens Act*.

1A Act binds Crown

- (1) This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) In subsection (1):

Crown includes a body created under an Act of the Territory or the Commonwealth unless the relevant Act indicates otherwise.

2 Interpretation

In this Act, where not inconsistent with the context, the following terms have the following meanings:

Contract means any agreement, whether written, oral, or implied, to do work or to procure work to be done, or to furnish materials in connection with work, or to pay for work, or for materials furnished or to be furnished in connection with work.

Contract price means the money payable to any contractor or sub-contractor for any work, or materials furnished or to be furnished in connection with work, under any contract, and whether such price has been fixed by express agreement or not.

Contractor means a person (not being a sub-contractor) contracting with or employed by another person to do work, or to procure work to be done, or to furnish materials in connection with work.

Court means the Supreme Court, or the Local Court if the matter is within its jurisdiction limit.

Fixture means such a fixture upon land as, having been attached to such land by the vendor, would pass to the purchaser upon the sale of the fee simple of the land.

Goods includes all produce of land when severed from the land.

Owner means the owner of the legal or equitable fee simple of land.

Occupier means the lessee, sub-lessee, tenant, or occupier for the time being of land other than the owner thereof.

Prescribed means prescribed by regulation made under this Act.

Prescribed fee means the fee prescribed under the Registration Act.

Regulation means a regulation made under this Act.

Sub-contractor means a person contracting with or employed by a contractor or sub-contractor to do work, or to procure work to be done, or to furnish materials in connection with work for the purposes of the contract made by such contractor or last-mentioned sub-contractor.

Wages means money to which a workman is or may be entitled for manual work or personal service, and whether to be ascertained by time or by the piece, and whether at a fixed price or rate or otherwise.

Work means every description of manual work or personal service.

Workman means every person employed in or doing any manual work or personal service.

3 Division of Act

This Act is divided into four Parts:

Part I Liens and charges:

Part II Registration and discharge of liens:

Part III Legal procedure:

Part IV Miscellaneous.

Part I Liens and charges

4 Workmen's lien

- (1) A workman doing work for an owner or occupier, or for a contractor or sub-contractor for the benefit of an owner or occupier, shall have a lien for his wages for such work on the estate or interest in land of the owner or occupier in each of the following cases:
 - (a) where the work is done with the assent, express or implied, of the owner or occupier to the land or to any fixture thereon;
 - (b) where the work is done in or about the manufacture of materials which are, with the assent, express or implied, of the owner or occupier, used or intended to be used in or about work done, or intended to be done, to the land or to any fixture thereon.
- (2) A workman employed upon land and doing work there for the owner or occupier thereof in connection with pastoral, agricultural, horticultural, or mining pursuits carried on upon such land shall have a lien on all goods on such land belonging to such owner or occupier, but such lien shall not avail against the title of a bona fide purchaser, mortgagee, pledgee, or incumbrancee without notice of such lien.
- (3) A lien under this section shall be limited to 4 weeks' wages or wages for work not occupying more than 4 weeks, not exceeding the sum of \$3,000.

5 Lien of contractor or sub-contractor

A contractor or sub-contractor shall have a lien for the contract price, so far as accrued due, on the estate or interest in land of any owner or occupier in each of the following cases:

- (a) where the work is done, with the assent, express or implied, of the owner or occupier to the land or to any fixture thereon;
- (b) where the materials are, with the assent, express or implied, of the owner or occupier, used or intended to be used in or about work done, or intended to be done, to the land or to any fixture thereon.

5A No lien on Crown land or goods

- (1) A lien under section 4(1) or 5(1) is not available on an interest held by the Crown in land but is available on an interest held by another person from the Crown.

- (2) A lien under section 4(2) is not available on goods belonging to the Crown.

6 Extent of lien

Liens under subsection (1) of section 4 or under section 5 shall not, in cases other than those of workmen employed by the owner or occupier, extend beyond that portion of the contract price payable by the owner or occupier under the contract for the purposes of which the work or materials are done, furnished, or manufactured and unpaid at the time when the owner or occupier shall receive notice of the lien or of its registration, whichever shall first happen, nor extend at all to cases where there is no such contract binding the owner or occupier to pay a contract price.

7 Charge of workman and sub-contractor

- (1) A workman shall have a charge on any money payable to the contractor or sub-contractor by whom he is employed for his wages in respect of work done for the purposes of the contract of such contractor or sub-contractor.
- (2) A sub-contractor shall have a charge on any money payable to the contractor or sub-contractor with whom he shall have contracted for that portion of the contract price payable to the first-mentioned sub-contractor in respect of work done or materials furnished or manufactured for the purposes of the contract of such contractor or secondly mentioned sub-contractor.
- (3) A charge under this section shall attach only to money payable under the contract for the purposes of which the work or materials have been done, supplied, or manufactured, and shall lapse unless an action be brought to enforce the same within 28 days after the wages or contract price in respect of which such charge has arisen shall have become due within the meaning of section 10, subsection (2). Such action shall not be discontinued without the consent of the defendant or an order of the Court, and the Court on making such order may declare that any charge claimed does not exist or order that it shall forthwith lapse, or that the plaintiff have further time to bring a fresh action to enforce the charge.
- (4) The charge of a workman under this section shall be limited to 4 weeks' wages or wages for work not occupying more than 4 weeks, not exceeding the sum of \$3,000.
- (5) A charge under this section shall not avail as to any moneys bona fide paid over without notice of such charge.

8 Priority of liens and charges

The several liens and charges created by this Act shall have priority in the following order:

- I The liens and charges of workmen for wages;
- II The liens and charges of sub-contractors;
- III The liens of contractors.

As between themselves, persons belonging to each of the said three classes shall, subject to the provisions hereinafter contained, participate ratably in the benefits of their liens or charges.

9 Lien subject to registered, but not to unregistered, mortgage, &c.

A lien under this part of Act shall be subject to every dealing, assurance, mortgage, encumbrance, or charge on the estate or interest in the land of the owner or occupier, or on the goods the subject of the lien, registered before the registration of such lien, but shall take priority of any dealing, assurance, mortgage, encumbrance, or charge not so registered.

9A Unregistered interests

No unregistered estate or interest is to prevail against a registered lien.

9B Liens for materials

A lien may be had under this Act for materials furnished despite that the materials may not be furnished in connection with work.

Part II Registration and discharge of liens**10 Lien to be registered**

- (1) A lien under this Act with regard to land shall be available only if registered before the expiration of 28 days after the wages or contract price in respect of which such lien has arisen shall for the purposes of this section have become due.
- (2) Any wages or contract price shall for the purposes of this section be deemed to have become due:
 - (a) if unpaid for 7 days after the same (being payable) shall have been demanded by notice in writing, signed by the person

claiming the same and given to the person liable to pay the same, or posted in a registered letter addressed to him at his usual or last known place of abode;

- (b) if either before or after the same shall have become payable, the person liable to pay the same shall have called a meeting of his creditors, or committed an act of bankruptcy, or executed a deed of assignment within the meaning of the *Bankruptcy Act 1966* of the Commonwealth, or shall have taken or attempted to take the benefit of any law relating to bankrupts or insolvent debtors, or shall have suffered his goods to be taken in execution or seized under legal process or distress for rent.
- (3) A lien shall be registered by the person claiming the same lodging with the Registrar-General a notice in the prescribed form or in a form to a similar effect, which notice shall be signed by such person and attested, together with the prescribed fee.
- (4) A lien may be registered after the wages or contract price have become payable, although the 7 days mentioned in subsection (2) shall not have commenced to run.
- (5) Notices of lien under this Act shall state the Court in which action will be brought to enforce the same, and any person to whom notice is given may deposit the amount claimed in such Court to abide the event of such action, and thereupon the lien shall be deemed to cease.

11 Duty of Registrar-General on receiving notice of lien

If the estate or interest of the owner or occupier that is sought to be affected by the lien is registered under the Land Title Act, on the lodging of a notice of lien the Registrar-General must record the notice and serve a copy of the notice on the owner of the land as if the notice were a notice required by the Land Title Act to be served on the owner.

12 Notice of lien has effect as caveat

A notice of lien that is lodged with the Registrar-General is to be taken to be a caveat lodged in accordance with section 138 of the *Land Title Act*, and section 142 of that Act applies.

15 Liens to cease in certain events

Every lien under this Act, other than a lien referred to in section 12, upon the estate or interest of any owner or occupier shall cease unless an action shall be brought against the owner or occupier for enforcement of the lien within 14 days from the registration thereof.

16 Satisfaction of lien to be recorded

The Registrar-General upon proof to his satisfaction that any person who has registered a lien has failed in an action to enforce the same, or that no such action has been brought by him against the owner or occupier within 14 days from registration or having been so brought has been discontinued without an order of the Court giving further time to bring a fresh action to enforce the lien, which order the Court is empowered to make, or that any claim made or judgment obtained against the owner or occupier has been satisfied by payment or otherwise, or in any case where the owner or occupier shall have deposited with the Registrar-General the amount claimed in respect of the lien, either in discharge of such lien or to abide the event of an action to enforce the same, or to recover the amount so deposited, together with the prescribed fee, shall record in the Register if the lien is registered there or otherwise on the notice of lien a memorandum that the lien has ceased, and upon such entry the lands affected by such notice shall be discharged from the lien.

17 Proceedings to compel Registrar-General to record lien in event of refusal

If the Registrar-General shall refuse to make the memorandum that any lien has ceased, the owner or occupier may apply to the Court to direct the Registrar-General to make such memorandum, and notice of such application shall be given by posting the same in a registered letter 2 days at least before such application shall be heard to the person who has given the notice of the lien to his address mentioned in such notice, and he shall be entitled to be heard on the application.

18 Judge may make order

Upon the hearing of such application the Court may make such order in respect thereof as shall be just and the Registrar-General shall obey such order, and the costs of and incidental to such application shall be in the discretion of the Court.

19 Enforcement of lien on goods under section 4(2)

- (1) Any person entitled to a lien under section 4(2) may give to the owner or occupier, his manager, or overseer, or leave for him at his residence or place of business, or may send him by registered letter to his last known address, a notice in writing, demanding payment of the wages due to him, and stating the amount thereof and the nature of the claim; and from the giving or leaving of such notice such goods shall not be removed by the owner or occupier, or any person on his behalf, from the land until the wages of such person,

to the extent of his lien, have been paid, or an agreement permitting the removal of the goods shall have been made.

- (2) Every such person shall, within 14 days after giving or leaving such notice, commence an action to enforce his lien, otherwise such lien shall cease.

20 Mortgagee may recover wages or contract price paid by him

Where a lien under this Act attaches to the estate or interest in land of any owner or occupier or to any goods any person interested in such land or goods as mortgagee, incumbrance, or pledgee, whether his interest is or is not subject to such lien, may pay the wages or contract price in respect of which the lien exists, together with all costs, charges, and expenses of and incidental thereto, and shall, on demand, be entitled to recover the same from the mortgagor, encumbrancer, or pledgor, together with interest thereon, at the rate of 12% per annum, calculated from the date of payment, and the moneys so paid with interest as aforesaid, shall be a charge on the estate or interest or the goods as if originally portion of the moneys secured by the mortgage, incumbrance, or pledge.

Part III Legal procedure

21 Action to enforce lien or charge

Any person entitled to a lien or charge under this Act may bring an action to enforce such lien or charge, or to recover any amount deposited under section 16, in any Court in which the wages or contract price in respect of which such lien or charge is claimed could have been recovered against the person primarily liable therefor.

22 Procedure in case of deposit

In case of deposit under section 16 of the amount claimed in respect of a lien, an action to recover the amount so deposited may be brought within 14 days from the registration of the lien, but not after, and if such action be not so brought the amount so deposited shall be repaid by the Registrar-General to the person who deposited the same.

23 Person primarily liable may be joined in action to enforce lien or charge

In every action to enforce a lien or charge or to recover an amount deposited under section 16, the person primarily liable for the wages or contract price may be joined as a defendant unless

judgment has already been obtained against him, and judgment in such action shall be given against the person primarily liable for the full sum due by him, and an order shall be made for the enforcement of the lien or charge, or the payment of the money deposited or otherwise in relation thereto as shall be just, but shall not prejudice the right of the plaintiff to enforce any other lien or charge to which he shall be entitled under this Act.

24 Certificate of judgment against person primarily liable prima facie evidence

When a judgment has been obtained against the person primarily liable for wages, or contract price or part thereof, the production of a certificate of such judgment in the prescribed form, specifying such wages or contract price or part thereof and purporting to be signed by the proper officer of the Court in which such judgment has been obtained, shall in all cases be prima facie proof that the wages or contract price or part thereof in respect of which such judgment has been obtained are due.

25 Order for enforcement of lien or charge, how carried into effect

- (1) An order for the enforcement of a lien or liens may be carried into effect by a writ or warrant from the Court for the sale of the estate or interest in land or the goods the subject of the lien.
- (2) An order for the enforcement of a charge may be carried into effect in like manner as a judgment of the Court making the order by execution against the goods and land of the person against whom such order shall be made.
- (3) Any order for the payment of money deposited under section 16 shall be obeyed by the Registrar-General, who need not, however, be a party to the action.

26 Person affected by lien or charge may pay money into Court

- (1) In case of an action to enforce a lien the person against whose property such lien is sought to be enforced or any person interested in such property may by payment into Court of the amount claimed in respect thereof relieve himself and the property from liability with regard to the lien or in respect of the costs of further proceedings.
- (2) In case of an action to enforce a charge the person against whom such charge is sought to be enforced may by payment into Court of the amount claimed in respect thereof relieve himself of all further liability in respect of such charge or in respect of the costs of further proceedings.

27 Court may order for detention, inspection, &c.

In case of an action to enforce a lien or charge the Court in which such action is brought may, upon the application of any party with or without notice to any other party, make any order for the detention, preservation, or inspection of any property concerned, and may for any purpose ancillary or incidental to the action authorise any person to enter upon or into any land or building in the possession of any party to the action.

29 Claims that may be included in actions to enforce lien or charge

- I. The claims of any number of persons may be included and claims against any persons interested in the subject matter of the action or in any contract or sub-contract out of which the claim in the action arises may be included, but if it appears to the Court that any of such claims cannot conveniently be tried or dealt with in such action the Court may order separate trials or separate actions in respect of any of such claims:
- II. The Court may deal with any claim relating to or connected with the original subject of the action and made by any party to the action against any person whether already a party to the action or not, who shall have been duly served with notice in writing of such claim pursuant to regulation, and may grant relief in respect of which claim as if such person had been defendant to an action under this Act. Every person so served with notice shall thenceforth be deemed a party to such action, and shall have the same rights in respect of his defence against or counter-claim to such claim and with respect to any claim over against any other person as if he had been a defendant to such action and the party claiming against him had been plaintiff.

30 Person interested in subject matter may be made a party

Any person claiming to be interested in the subject matter of an action under this Act may apply to the Court to be made a party to the action, and the Court may make such order in respect of such application and of the subsequent proceedings in relation to such person as shall be just.

31 Lienor may pay moneys due mortgagee of chattels

- (1) Any person who has obtained an order for the enforcement of a lien under this Act upon any goods subject to a registered mortgage may pay the mortgagee, who shall receive, the principal moneys secured by his mortgage, with interest up to the date of such

payment, at the rate provided for in such mortgage, notwithstanding the principal moneys shall not be due, or may pay such principal moneys and interest into the Court making the order, which Court shall on application by the mortgagee order payment thereof to him.

- (2) On payment to the mortgagee, or into Court under subsection (1) the goods shall be discharged from the mortgage, but the sum secured by the lien shall be increased by the amount so paid, and the order for the enforcement of the lien shall be enlarged accordingly.
- (3) Any principal moneys paid under subsection (1) shall carry interest in favour of the person paying the same at the same rate as under the mortgage.

32 Claim or registration may be cancelled

Any person alleging that he is prejudicially affected by a claim, lien, or charge, or by registration under this Act, may at any time apply to the Court to have such claim or registration cancelled or the effect thereof modified, and such order may be made as may be deemed just.

33 Penalty for claim with intent to defraud

If any person vexatiously or without any reasonable grounds, and with intent to defraud, gives notice of claim, lien, or charge, or registers any lien, such person shall be guilty of an offence against this Act.

Penalty: \$2,000.

34 Penalty for vexatious claim

If any person vexatiously or without any reasonable grounds gives notice of claim, lien, or charge, or registers any lien, such person shall be liable to pay to any person prejudicially affected thereby, such compensation as the Court may determine will compensate the person prejudicially affected.

Part IV Miscellaneous

39 Regulations

The Administrator may from time to time make, alter, and revoke regulations for all or any of the following purposes:

- (a) prescribing forms for use under this Act;

(c) generally for carrying out the objects of this Act.

In the construction of this section general words shall not be limited or controlled by particular words.

41 Persons having lien at common law may sell

Every person who has bestowed work or materials upon any chattel or thing in altering the condition thereof, or improving the same, and who is entitled to a lien on such chattel or thing at common law, may, while such lien exists, if the amount due to him in respect of such lien remains unpaid for one month after the same has become due, sell such chattel or thing by public auction, upon giving to the owner thereof, or posting to him at his last known place of abode 14 days before such sale, a notice in writing, by registered letter, stating the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the proposed auctioneer.

42 Application of proceeds of sale

Upon any sale under section 41 the proceeds arising therefrom shall be applied in payment of the amount in respect of which such lien exists, and of the costs of and incidental to such sale, and any surplus shall forthwith be paid to the Registrar of the Local Court nearest to the place of sale, to be held by him for the benefit of the person entitled thereto.

The Local Court may, on the application of such last mentioned person, order payment of such moneys to him.

43 Wages of workman payable monthly

Whenever any contract shall hereafter provide for payment of wages to any workman at longer intervals than from month to month, the wages of such workman shall, notwithstanding such provision, be deemed to be payable monthly, computing from the date of the commencement of the work.

44 Other remedy not prejudiced

Nothing in this Act shall prejudice any other remedy which any person may have in respect of any contract price or wages payable to him.

45 Penalty on attempt to deprive workman of lien on goods

If any person, after a demand has been made, as provided by section 19, shall conceal, sell, kill, remove, or destroy any goods upon which any workman has a lien under this Act with intent to

deprive such workman of his lien, or to delay such workman in the enforcement thereof, or in obtaining payment of his wages, he shall be guilty of an offence against this Act, punishable by a penalty not exceeding \$2,000, or by imprisonment (with or without hard labour) for a term not exceeding 6 months.

47 Protection from liability

- (1) The Registrar-General, or any person acting under the authority of the Registrar-General, is not liable to any action, suit, or proceeding in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of a power under this Act, or under the Land Title Act where the exercise of such power is incidental to the performance of a function under this Act.
- (2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the Territory.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION**PART 1 Acts of the State of South Australia*****Workmen's Lien Act 1893 (Act No. 573, 1893)***

Assent date
Commenced

Workmen's Lien Act 1896 (Act No. 658, 1896)

Assent date
Commenced

PART 2 Ordinance and Act of the Northern Territory***Ordinances Revision Ordinance 1973 (Act No. 87, 1973)***

Assent date 11 December 1973
Commenced 11 December 1973 (s 12(2))

Amending Legislation***Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date 26 August 1974
Commenced 11 December 1973 (s 3(2))

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)

Assent date 24 October 1974
Commenced 11 December 1973 (s 3)

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)

Assent date 28 June 1976
Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss
3 and 4: 11 December 1973; s 5: 24 October 1974

Registration (Consequential Amendments) Act 1991 (Act No. 55, 1991)

Assent date 26 September 1991
Commenced 1 January 1992

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
Commenced s 7: 19 April 1996 rem: 1 July 1996

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date 12 September 2000
Commenced 1 December 2000

Workmen's Lien Amendment Act 2002 (Act No. 17, 2002)

Assent date 7 June 2002
Commenced 15 July 2002

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to: ss 3, 4, 6, 9, 10, 12, 13, 16, 18, 22, 23, 26, 30, 31, 34, 35, 41 – 44, 51, 53 – 56, 58, 61, 63, 66, 68, 69, 70, 71, 73, 75, 77 – 81, 84, 89, 91, 92, 97 – 99, 101 – 104, 106, 108, 109, 111, 113, 115, 118, 120 – 122, 124, 127, 130, 131, 135, 140, 143 – 145, 148, 149 and Sixth sch.

4 LIST OF AMENDMENTS

It	sub No. 55, 1991, s 8
s 1	amd No. 55, 1991, s 8 sub No. 45, 2000, s 10
s 1A	ins No. 17, 2002, s 4
s 2	amd No. 55, 1991, s 8; No. 45, 2000, s 10
s 4	amd No. 55, 1991, s 8
s 5A	ins No. 17, 2002, s 5
s 7	amd No. 55, 1991, s 8
ss 9A – 9	ins No. 17 2002, s6
s 10	amd No. 55, 1991, s 8
ss 11 – 12	sub No. 45, 2000, s 10
ss 13 – 14	rep No. 55, 1991, s 8
s 15	amd No. 45, 2000. s10
ss 16 – 20	amd No. 55, 1991, s 8
s 22	amd No. 55, 1991, s 8
s 28	rep No. 55, 1991, s 8
ss 33 – 34	amd No. 55, 1991, s 8
ss 35 – 38	rep No. 55, 1991, s 8
s 39	amd No. 55, 1991, s 8
s 40	rep No. 55, 1991, s 8
ss 41 – 42	amd No. 55, 1991, s 8
s 45	amd No. 17, 1996, s 6
s 46	rep No. 55, 1991, s 8
s 47	sub No. 45, 2000, s 10
s 48	rep No. 17, 2002, s 7
s 49	rep No. 55, 1991, s 8