



Western Australia.

ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. XX.

AN ACT to give greater Security to Workmen
for obtaining Payment of their Wages.

[Assented to, 23rd December, 1897.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited as the Workmen's Lien Act, 1897, and shall come into operation on the thirty-first day of December, 1897.

Short title and commencement.

2. IN this Act, unless the context otherwise requires,—

“Defendant” shall mean any person against whom a demand is made in a legal proceeding, whether by way of claim, counter-claim, or set-off:

Interpretation.

“Sum found to be due” shall mean so much of the amount claimed in any legal proceedings as is found to be due, and, where there is a counter-claim or set-off, shall mean the balance found to be due:

“Writing” shall include print, or part writing and part print.

1. *Where the Workman has obtained a Judgment or Order.*

Workman obtaining judgment or order against contractor may obtain certificate of cause of debt.

Employers and Employés Act, 1890 (Victoria), Part II., s. 23.

First Schedule.

3. IF, in any proceeding in any court of competent jurisdiction, a judgment or order is given or made for any sum found to be due by the defendant for work and labour, and the character of the work and the locality in which it was done appear from the evidence, the presiding judge or magistrate shall, upon the application of the person to whom such sum is found to be due, sign and deliver to him a certificate of the cause of the debt, in the form in the First Schedule, which, for the purposes of this Act, shall, unless the judgment or order is set aside, be conclusive; but no such certificate shall be given if the work appears to have been done upon a movable chattel of such a kind that it would be practicable for a workman to have a lien thereon, by retaining the same in his actual possession.

If judgment, etc., be for work for which money is due to contractor, workman may serve notice on contractee requiring payment.

Ibid., s. 29.

Second Schedule.

4. IF the work done be work, or part of or incidental to work for the doing of which any moneys may be due or accruing due to the defendant in such proceeding (hereinafter referred to as "the contractor") under any express or implied contract with any third person, the person to whom in such proceeding the sum was found to be due (hereinafter referred to as "the workman") may obtain payment of the sum mentioned in the certificate out of such moneys by serving on such third person (hereinafter referred to as "the contractee") a notice, in the form in the Second Schedule, together with a copy of the certificate aforesaid.

Subject to priorities, service of notice to operate as assignment to workman of money in contractee's hands.

Ibid., s. 30.

5. UPON such service all moneys due or to accrue due as aforesaid from the contractee to the contractor under the contract, to the amount of the debt specified in the certificate as due to the workman, shall be deemed to be effectually assigned by the contractor to the workman, but subject to any prior assignment thereof made for valuable consideration or effected under this Act and binding upon the contractor and contractee at the time of service being effected upon the contractee as aforesaid.

Obligation on part of contractee to pay moneys so assigned.

Ibid., s. 31.

6. AFTER such service and until a discharge for the workman's said debt, in the form in the Third Schedule, shall have been produced to, and a copy thereof left with the contractor, he shall (subject to the provision as to priorities herein contained) satisfy such debt out of the moneys assigned as aforesaid, by paying to the workman, upon his application, the said moneys as they become due and payable.

Priorities among one another of assignments effected under this Act.

Ibid., s. 32.

7. THE priority of assignments under this Act among one another shall be determined by the order of service of notice as aforesaid on the contractee; but all notices served within seven days of the first notice served in respect of the same contractor in any one year shall be deemed to be served at the same time for the purpose of securing the equal distribution of moneys due and

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accruing due to the contractor amongst all workmen serving notice within such period of seven days ratably in proportion to the amount of their respective debts until payment of all in full, and, until such period of seven days has expired, no workman's debt shall be paid by the contractee out of such moneys.

8. IF the contractee shall fail to pay as aforesaid, the workman may sue for and recover in his own name from the contractee the moneys assigned under this Act as if the assignment effected by this Act were a legal assignment, and by any proceeding which the contractor might have taken if there had been no assignment under this Act, subject to any defence which would have been available against the contractor, except a defence founded on the act of the contractor after service upon him of the summons in the proceeding in which the certificate was obtained.

If contractee fail to pay, workman may sue him.

Ibid, s. 33, slightly altered.

9. UPON satisfaction by any other means than as aforesaid of the whole or part of the debt mentioned in any certificate as due to the workman, or on the setting aside in the whole or in part of the judgment or order in respect of which any such certificate has been given, any assignment effected under this Act in respect of the debt shall in the whole or in part (as the case may be) cease to be operative, but without prejudice to any *bona fide* payment or other dealing by the contractee on the footing of such assignment prior to his receiving notice and sufficient evidence of such satisfaction or setting aside, and, so far as may be necessary to support any such payment or dealing, the assignment shall continue in force.

Assignment, how far to determine on satisfaction.

Ibid, s. 34.

10. THE workman, upon the request of the contractor or contractee paying to him the debt mentioned in the certificate, shall sign a discharge therefor in the form in the Third Schedule, which shall be free from stamp duty, and any workman refusing to sign a discharge if tendered for signature at the time of payment shall forfeit to the contractor or contractee making the payment a sum equal to the amount of the payment, to be recovered before two Justices of the Peace in petty sessions in a summary way.

Workman on request to sign discharge.

Penalty.

Third Schedule.

Ibid, s. 35.

2. *Where the Workman has not obtained a Judgment or Order.*

11. WHENEVER, during the progress or at the conclusion of a contract to do work above the value of One hundred pounds, not relating to a movable chattel of such a kind as aforesaid, the contractee pays money to the contractor on account of the contract, the contractee shall require from the contractor, and the contractor shall deliver to him according to the form in the Fourth Schedule, a statement of the wages (if any) for which no judgment or order has been obtained against the contractor, which are due to every

Contractee, on making a payment, to require from contractor a statement of wages due, verified by declaration.

Fourth Schedule.

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workman for employment upon the work contracted for, or a statement that no such wages are due, and, in either case, a declaration verifying such statement according to the same Schedule; and the contractor shall not be entitled to any payment from the contractee until such statement and declaration have been delivered.

Declaration in form in schedule to be equivalent to statutory declaration before J.P.

12. SUCH declaration subscribed by the contractor, and attested or purporting to be attested, shall have the like force and effect, and the party falsely making the same shall incur the like penalties as if such declaration were made before a Justice of the Peace, in accordance with the statutes in that behalf.

Subject to certain priorities, contractee is to appropriate money due to contractor in payment of wages due.

13. SUBJECT to any prior assignment made *bona fide* and for valuable consideration, or effected under this Act, and binding upon the contractor and contractee, the contractee, upon receiving the statement and declaration aforesaid, shall become liable to satisfy the wages appearing by the statement to be due, but shall be so liable to the extent only of any payments thereafter made by him to the contractor, and shall appropriate such payments so far as required to the satisfaction of such wages.

If any such payment shall be insufficient to satisfy such wages, the contractee shall satisfy them ratably in proportion, and so on, with successive payments.

Subject as aforesaid the wages appearing to be due by the statement delivered on the occasion of any payment by the contractee to the contractor shall, so far as they remain unsatisfied out of that payment, be payable out of every subsequent payment, and shall have priority over wages appearing by any statement of later date to be due.

All moneys paid by the contractee towards satisfaction of wages as aforesaid shall be deemed to be paid by the contractee to the contractor.

If money is not so appropriated workmen may sue contractee.

14. IF the contractee makes any payment under the contract to the contractor without appropriating such payment towards the satisfaction, as required by this Act, of the wages appearing by a statement delivered as aforesaid to be due, any workman to whom wages so appear to be due may sue the contractee at law, and may recover from him such wages as remain due as if he were the contractor who had employed such workman, and whether the amount remaining due from the contractee to the contractor under the contract is or is not sufficient to satisfy such wages.

Contractee's liability to cease upon satisfaction by any other means.

15. UPON satisfaction, wholly or in part, of the wages appearing by the statement aforesaid by any other means than a payment by the contractee, the liability of the contractee to the workmen

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respectively named in such statement shall cease so far as such satisfaction shall extend

16. UPON receiving payment in whole or in part of the wages appearing by any statement as aforesaid to be due to him, every workman shall sign a receipt, if then tendered him, acknowledging such payment, and in default shall forfeit to the contractor or contractee making the payment, a sum equal to the amount then paid, to be recovered before two Justices of the Peace in petty sessions in a summary way.

Workman to give receipt for payment on account of wages appearing by the statement to be due.

3. General.

17. NOTHING in this Act shall be construed to prejudice any other remedy that the workman may have against the contractor in respect of the debt, or, save as expressly provided, to affect any right subsisting under any contract between the contractor and contractee.

Saving of workman's other remedies.

Ibid, s. 36.

18. DOCUMENTS required by this Act shall be in writing, and may be served,—

Service of documents.

- (1.) By being delivered personally to the person for whom they are intended, and addressed to him :
- (2.) By being left for such person addressed to him at his usual place of abode or business with some adult person there :
- (3.) By registered letter, correctly addressed, to such person at his usual place of abode or business :
- (4.) Where the Government is the contractee, the notice may be served on the Director of Public Works, by being left addressed to him at his office in Perth, or by registered letter addressed to him there.

Service by registered letter shall *prima facie* be deemed to have been effected at the time when the letter would, in the ordinary course of post, be delivered.

In the name and on behalf of the Queen I hereby assent to this Act.

GERARD SMITH, Governor.

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First Schedule.

Section 3.

IN PURSUANCE of the Workmen's Lien Act, 1897, I hereby certify that on the
day of the sum of £ was in a proceeding before
me ascertained to be due and payable by to for
work done by him as * upon †

As witness my hand this day of

[Signature of Presiding Judge or Magistrate.]

* State generally in what capacity the person worked, as "shipwright," etc. † Describe generally the thing upon or in respect of which the person was employed.

Second Schedule.

Section 4.

To [insert name and addition of contractee].

TAKE NOTICE that the work specified in the Certificate, a copy of which is served herewith, having been done in performance of an agreement entered into with you by [here insert name and addition of contractor], who has failed to pay me for such work, you are hereby required under the Workmen's Lien Act, 1897, and subject as there provided concerning priorities, to pay me on demand the amount specified in the Certificate out of any moneys now due, or from time to time becoming, and as they become, due from you to the said [here insert name of contractor] under the said agreement; and on your failing so to do you will be liable to legal proceedings at my suit to obtain payment.

As witness my hand this day of

[Signature of Workman.]

Third Schedule.

Section 10.

I HEREBY acknowledge that the debt of £ certified to be due to me from [here insert name of contractor] by a Certificate issued under the Workmen's Lien Act, 1897, and dated the day of , has been fully discharged.

As witness my hand this day of

[Signature of Workman.]

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Fourth Schedule.

Section 11.

STATEMENT made pursuant to the Workmen's Lien Act, 1897, of the wages due on the _____ day of _____ from me to workmen for work done in performance of a contract entered into the _____ day of _____ between me and [*here insert name of contractee*].

Name of Workman.	Nature of Work.	Time.	Amount.

NOTE.—If no wages are due, write *Nil* in each column.

I hereby solemnly and sincerely declare that, to the best of my knowledge, information, and belief, the above Statement is true, and that no wages are due from me for work done in performance of the said contract other than as appears by the above Statement.

Dated this _____ day of _____

[*Signature of Contractor.*]

Signed by the said [*here* }
insert contractor's name] in }
the presence of me,

[*Witness's Signature.*]