

Western Australia

Workmen's Wages Act 1898

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Workmen's Wages Act 1898

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Workmen's Wages Act 1898

An Act to make better provision for securing the payment of workmen's wages.

1. Short title

This Act may be cited as the *Workmen's Wages Act 1898*¹.

2. Interpretation

In this Act, if not inconsistent with the context, —

Employer means any person or body of persons, whether incorporated or not, at whose request, or upon whose credit, or on whose behalf, with his or their privity or consent, work is done, and includes also all persons claiming under him whose rights are acquired after the work in question is commenced:

Contractor means a person who contracts directly with the employer for the performance of work for him; and

sub-contractor means a person who contracts with a contractor, or with another sub-contractor, for the performance of work for such contractor or sub-contractor:

Court means the Court in which any proceeding may be taken under this Act, and includes a judge or magistrate of any such court;

Wages includes any money or thing had or contracted to be paid, delivered, or given as recompense, reward, remuneration, or consideration for any service, work, or labour rendered or done, or to be rendered or done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, and whether payable daily, weekly, or monthly:

Workman means any person, male or female, and whether under or above the age of 21 years, in any manner engaged or employed in manual labour or in work of any kind, and whether his or her remuneration is to be according to time or by piece-work, or at a fixed price, or otherwise howsoever.

[Section 2 amended by No. 59 of 2004 s. 141.]

3. Workmen employed in manual labour to be paid weekly

In the absence of an agreement in writing to the contrary, the entire amount of wages earned by or payable to any workman engaged or employed in manual labour shall be paid to such workman at intervals of not more than one week.

4. Wages to be first charge on money due to or in hands of contractor

- (1) The wages due to workmen employed on any contract, work, or undertaking shall, subject to the employer's rights as mentioned in section 15, be a first and paramount charge upon the moneys due to the contractor by the employer under or in respect of the contract, work, or undertaking: Provided that until service of notice of attachment, as hereinafter mentioned, the employer shall be at liberty to pay to the contractor all moneys which have accrued due and are payable by the employer to the contractor under or in respect of the contract, work, or undertaking.
- (2) No workman shall, under this Act, be entitled to a charge or claim for any amount exceeding \$20.

[Section 4 amended by No. 113 of 1965 s. 8(1).]

5. Assignment of money due or received under contract to have no effect until wages paid to workmen

Every assignment, disposition, or charge (legal or equitable) made or given by the contractor to any person whomsoever, other than his workmen for wages not exceeding the sum mentioned in the last preceding section, due to them, of or upon the moneys due or to become due to him under or in respect of

the contract, work, or undertaking shall have no force or effect at law or in equity as against such wages due and to accrue due to the workmen.

6. Moneys received by contractor not to be attached, and to be applied in payment of wages due

All moneys received by the contractor from the employer under or in respect of the contract, work or undertaking shall not be liable to be attached or charged, except by the workmen as hereafter mentioned, until all wages due or to accrue due to the workmen have been fully paid and satisfied; and the contractor shall apply all such moneys in payment of the wages due and to accrue due to the workmen.

7. Workmen whose wages are in arrear may attach moneys in hands of employer

Any workman whose wages remain unpaid for 3 days after they become payable and have been demanded may, within 7 days, make a statutory declaration of the amount of wages due, and serve the same upon the employer, and may serve the employer, or his attorney or agent, with a notice of attachment in the Form No. 1 set forth in the Schedule, or to the effect thereof; and upon service thereof all moneys due and thereafter to become due and payable to the contractor shall be attached, and shall be retained by the employer until the Court in which the claim is heard shall direct to whom and in what manner the same are to be paid.

But any employer may pay into the aforesaid Court the sum mentioned in the notice of attachment, if such sum is an ascertained and fixed sum, and the receipt of the Registrar of such Court for the said sum shall be a full discharge to the employer of his liability under the attachment.

[Section 7 amended by No. 59 of 2004 s. 141.]

8. Workman obtaining judgment against the contractor, Court may order employer to pay him

In the event of the workman obtaining judgment against the contractor for the wages claimed, or any part thereof, within the time hereinafter mentioned, he may obtain from the Court an order, in the Form No. 2 in the Schedule, or to the effect thereof, for the payment by the contractor's employer of the amount of the judgment, and may serve a copy of such order upon such employer or his attorney or agent.

9. Employer to pay workmen when ordered

At the expiration of 7 days after service of such last-mentioned order, but not earlier, the employer shall, out of the moneys attached in his hands, pay the amount stated in such order to the workman, who thereupon shall give the employer a discharge for such amount in the Form No. 3 in the Schedule.

10. Attachment to become void in default of judgment and order within one month

If the workman shall not obtain judgment against the contractor and serve the employer, his attorney or agent, with a copy of an order obtained pursuant to section 8, within one month from the service upon the employer of notice of attachment, the attachment shall become null and void, and any moneys which may have been paid into Court by the employer under section 7 shall be paid out of Court to the contractor.

11. Demands of workmen to be paid according to priority of notice

All moneys attached as aforesaid shall be paid by the employer in priority according to the order of the service of the notices attaching such moneys; but all notices served within 7 days of the first of such notices of attachment shall be deemed to be served simultaneously, for the purpose of securing the equal

distribution of the moneys attached amongst all workmen serving such notices within the aforesaid 7 days.

12. Simultaneous notices to rank equally among themselves

All demands for wages of workmen who serve simultaneous notices as aforesaid shall rank equally among themselves, and shall be paid in full, unless the moneys attached in the hands of the employer are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

13. Employer served with notice liable only for amount due by him to contractor

The employer served with an order or orders under this Act shall not be liable to make good any demand made upon him to a greater extent than the sum which is actually due and owing by him to the contractor at the time of the service of such order or the payment thereunder.

14. On failure to pay, workman may sue person served with notice

If the employer served with notice of attachment and order for payment shall fail to pay as aforesaid, the workman may sue for and recover in his own name in any Court having jurisdiction in the matter the moneys attached by any proceeding which the contractor might have taken had there been no attachment under this Act, subject to the right of the employer to set off against the workman's demand all moneys properly paid by the employer to the contractor under the contract prior to the service of the notice of attachment, and also all moneys which the contractor was at the time of the service of the notice of attachment liable to pay to the employer under the contract, or in consequence of any breach or non-performance thereof.

15. On satisfaction of demand attachment of moneys to cease to operate

Upon satisfaction of the workman's demand mentioned in any order for payment under this Act, or on the setting aside of such order, any attachment of moneys effected under this Act shall cease to be operative, but without prejudice to any *bona fide* payment by the employer served with an order for payment in accordance with such order previous to his receiving notice of such satisfaction or setting aside of the order.

16. Workman upon payment to sign a discharge

The workman shall, upon the request of the person paying to him the demand specified in any order for payment under this Act, and at the time of receiving the same, sign a discharge therefor in the said Form No. 3 set forth in the Schedule or to the effect thereof.

17. Act not to affect other remedies or vary rights between parties

Nothing in this Act contained shall be construed to prejudice any other remedy which a workman may have against his contractor in respect of the debt due to him, or, save as expressly provided, to affect any right subsisting under any contract between any contractor and the person employing him.

18. Act not to apply to personal chattels in possession of workman

Nothing in this Act shall be construed to lessen the security held in respect of work done upon a movable chattel by a workman, who has a right of a lien thereon.

19. Court may award costs

In all proceedings under this Act the Court shall have power to award costs to any of the parties to such proceedings.

20. Rules of Court to apply and power of Governor to make rules

All proceedings in any Court under this Act shall be subject to the rules of the Court for the time being in force relating to other proceedings in the Court, so far as the same can be; and the Governor may from time to time, subject to the provisions of this Act, make, revoke, and alter rules for carrying into effect the objects of this Act.

Such rules shall be published in the *Government Gazette*, and shall come into force on the date of such publication.

21. Service of orders, notices, etc.

All notices, orders, or documents by this Act required to be served on any person shall be served either personally or by registered letter addressed and posted to the last-known place of abode or business of such person, or shall be served in such manner and upon such person as the rules direct, or as the Court shall in any particular case by memorandum indorsed on the notice, order, or document served, direct. Service by post shall not be deemed to have been effected until the time when the notice, order, or document would be delivered in the ordinary course of the post.

22. Penalties and exemption from liability

If the employer or contractor shall, by himself or the agency of any other person or persons, contravene or, without good reason, fail to comply with any of the provisions of this Act, such employer, contractor, or agent shall be deemed guilty of an offence under this Act, and be liable to a penalty not exceeding \$50.

- (1) Where an offence for which an employer or contractor is by virtue of this Act liable to a penalty has, in fact, been committed by some agent of the employer or contractor, or other person, such agent or other person shall be

liable to the same penalty as if he were the employer or contractor.

- (2) Where an employer or contractor is charged with an offence against this Act, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer or contractor proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be convicted of such offence, and the employer shall be exempt from liability.

[Section 22 amended by No. 113 of 1965 s. 8(1); No. 51 of 1992 s. 16(1); No. 74 of 2003 s. 135.]

23. Workman in service of sub-contractor to have same rights and remedies as workman in service of contractor against employer

Where any work is let by a contractor to a sub-contractor, every workman in the service of such sub-contractor shall have the same rights and remedies in all respects against the first-mentioned contractor as a workman in the service of a contractor has under this Act against the employer of such last-mentioned contractor. For the purpose of giving effect to this section all the foregoing provisions of this Act shall be read as if there had been enacted therein respectively the word "contractor" in the place of the word "employer", and the word "sub-contractor" in the place of the word "contractor".

[24. Deleted by No. 59 of 2004 s. 141.]

[25. Omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]

Schedule

FORM NO. 1 — NOTICE OF ATTACHMENT

To [Name of employer].

TAKE notice that [Name of contractor] being indebted to me [or us] in the sum of \$ [or, in the sums set opposite our signatures] for wages, you are hereby required to retain in your hands all moneys due or accruing due from you to the said [Name of contractor].

Dated this ... day of ..., 20 .
A.B., [Workman] \$ [Amount owing]
C.D., ["] \$ [" "]
E.F., ["] \$ [" "]

FORM NO. 2 — ORDER FOR PAYMENT OF AMOUNT DUE TO WORKMAN

In the ... Court, holden at [or as the case may be].

Between A.B., plaintiff, and C.D., defendant.

To [Name of employer], of .

The above-named plaintiff having on ... day of ..., 20 , obtained a judgment in this Court against the above-named defendant for the sum of \$... for wages, you are hereby ordered under the Workmen's Wages Act 1898, to pay to the plaintiff the aforesaid amount out of any moneys now due or from time to time becoming due from you to the defendant.

Dated this ... day of ..., 20 .

(Seal of Court) [Registrar of Court.]

[Form No. 2 amended by No.59 of 2004 s. 141.]

Schedule

FORM NO. 3 — RECEIPT TO BE GIVEN BY WORKMAN ON PAYMENT
OF HIS CLAIM

I hereby acknowledge that the sum of \$ _____, due to me by [*Name of contractor*], for which I obtained judgment in the _____ Court at _____ on the _____ day of _____, 20____, under the *Workmen's Wages Act 1898*, has been fully paid by [*Name of person paying — i.e., contractor or employer*].

Dated this _____ day of _____, 20____.

A.B. [*Workman*].

Notes

- ¹ This is a compilation of the *Workmen's Wages Act 1898* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Workmen's Wages Act 1898</i>	62 Vict. No. 35	28 Oct 1898	28 Oct 1898
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Criminal Law Amendment Act (No. 2) 1992</i> s. 16(1)	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 135	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 1: The <i>Workmen's Wages Act 1898</i> as at 12 Mar 2004 (includes amendments listed above) (correction in <i>Gazette</i> 16 Apr 2004 p. 1212)			
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)