

South Australia

WORKER'S LIENS ACT 1893

An Act relating to worker's liens.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **3 March 2003**.*

Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.

WORKER'S LIENS ACT 1893

being

The Workmen's Liens Act 1893 No. 575 of 1893
[Assented to 23 December 1893]¹

as amended by

Act No. 658 of 1896 [Assented to 19 December 1896]

Statute Law Revision Act 1936 No. 2293 of 1936 [Assented to 8 October 1936]

Workmen's Liens Act Amendment Act 1964 No. 35 of 1964 [Assented to 22 October 1964]²

Statutes Amendment (Local Courts and Workmen's Liens) Act 1964 No. 59 of 1964 [Assented to 5 November 1964]³

Workmen's Liens Act Amendment Act 1988 No. 44 of 1988 [Assented to 5 May 1988]⁴

Statutes Amendment (Attorney-General's Portfolio) Act 2002 No. 33 of 2002 [Assented to 28 November 2002]⁵

¹ Came into operation 27 January 1894: *Gaz.* 25 January 1894, p. 173.

² Came into operation 21 June 1973: *Gaz.* 21 June 1973, p. 2568.

³ Came into operation 3 December 1964: *Gaz.* 3 December 1964, p. 1715.

⁴ Came into operation 1 September 1988: *Gaz.* 11 August 1988, p. 690.

⁵ **Part 13 (ss. 21-26) came into operation 3 March 2003: *Gaz.* 27 February 2003, p. 807.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

SUMMARY OF PROVISIONS

1. Short title
2. Interpretation

Part 1—Liens and charges

4. Workers' liens
5. Lien of contractor or sub-contractor
6. Extent of lien
7. Charge of worker and sub-contractor
8. Priority of liens and charges
9. Lien subject to registered, but not to unregistered, mortgage etc
- 9A. Unregistered interests
- 9B. Liens for materials

Part 2—Registration and discharge of liens

10. Lien to be registered
11. Duty of Registrar-General on receiving notice of lien
12. Notice to be deemed caveat
13. Registrar-General to keep index
14. Notices of lien open to inspection
15. Liens to cease in certain events
16. Satisfaction of lien to be recorded
17. Proceedings to compel Registrar-General to record lien in event of refusal
18. Judge or magistrate may make order
19. Enforcement of lien on goods under s. 4(2)
20. Mortgagee may pay wages or contract price and may recover wages or contract price paid by him

Part 3—Legal procedure

21. Action to enforce lien or charge
22. Procedure in case of deposit
23. Person primarily liable may be joined in action to enforce lien or charge
24. Certificate of judgment *prima facie* evidence
25. Order for enforcement of lien or charge, how carried into effect
26. Person affected by lien or charge may pay money into court
27. Court may order detention, inspection etc
29. Claims that may be included in actions to enforce lien or charge
30. Person interested in subject matter may be made a party
31. Lienor may pay moneys due to mortgagee of chattels
32. Claim or registration may be cancelled
33. Penalty for claim with intent to defraud
34. Penalty for vexatious claim
36. Jurisdiction etc of courts preserved
37. Costs

Part 4—Miscellaneous

- 39. Regulations
- 41. Persons having lien at common law may sell
- 42. Application of proceeds of sale
- 43. Wages of worker when deemed to be payable monthly
- 44. Other remedy not prejudiced
- 45. Penalty on attempt to deprive worker of lien on goods
- 47. Duties of Registrar-General
- 48. Lands etc of Crown not affected by this Act
- 49. Act to apply to land under Real Property Act

**APPENDIX
LEGISLATIVE HISTORY**

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Worker's Liens Act 1893*.

Interpretation

2. 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**" in the case of an action in the Supreme Court or District Court includes a judge of the court, and in the case of an action in the Magistrates Court includes a magistrate;

"**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;

"**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;

"**the Real Property Act**" means the *Real Property Act 1886* and any Act or Acts amending the same or substituted therefor;

"**wages**" means money to which a worker 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;

"**worker**" means every person employed in or doing any manual work or personal service.

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Worker's Liens Act 1893

Part 1—Liens and charges**Workers' liens**

4. (1) A worker 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 worker 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 four weeks' wages or wages for work not occupying more than four weeks, not exceeding in either case the sum of two hundred dollars.

Lien of contractor or sub-contractor

5. 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.

Extent of lien

6. Liens under subsection (1) of section 4 or under section 5 shall not, in cases other than those of workers 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.

Charge of worker and sub-contractor

7. (1) A worker 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 twenty-eight 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 worker under this section shall be limited to four weeks' wages or wages for work not occupying more than four weeks, not exceeding in either case the sum of two hundred dollars.

(5) A charge under this section shall not avail as to any moneys *bona fide* paid over without notice of such charge.

Priority of liens and charges

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

- I. The liens and charges of workers 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.

Lien subject to registered, but not to unregistered, mortgage etc

9. 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.

Unregistered interests

9A. No unregistered estate or interest shall prevail against a registered lien.

Liens for materials

9B. Liens shall be had under this Act for materials furnished, although such materials may not be furnished in connection with work.

Part 2—Registration and discharge of liens

Lien to be registered

10. (1) A lien under this Act with regard to land shall be available only if registered before the expiration of twenty-eight 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 seven 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 in South Australia:
- (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 1924-1933* 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 in the General Registry Office a notice in the prescribed form and accompanied by the prescribed fee, which notice shall be signed by such person and attested.

(4) A lien may be registered after the wages or contract price have become payable, although the seven 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.

Duty of Registrar-General on receiving notice of lien

11. Upon the lodging of such notice the Registrar-General shall—

- I. where the estate or interest of the owner or occupier sought to be affected by the lien is registered under the Real Property Act, make a memorandum of such notice and the day and hour of the lodging thereof upon the folium of the Register Book on which such estate or interest is registered, and shall send a copy of such notice through the post addressed to the owner or occupier at his address as appearing in the Register Book:
- II. where the estate or interest of the owner or occupier sought to be affected by the lien is not registered under the Real Property Act, make a memorandum on such notice of the day and hour of the lodging thereof, and send a copy of such notice through the post addressed to the owner or occupier at his address as given in the notice.

Notice to be deemed caveat

12. A notice lodged in respect of land under the provisions of the Real Property Act shall be deemed to be a caveat forbidding the registration of any dealing with the estate or interest sought to be affected by the lien, unless such dealing shall be expressed to be subject to the claim of the person lodging the notice, and the provisions of the Real Property Act relating to caveats shall, so far as applicable and so far as consistent with this Act, apply to every such notice.

Registrar-General to keep index

13. All notices of lien lodged in the General Registry Office shall be numbered consecutively, and the Registrar-General shall keep an alphabetical index containing the names of all persons giving notices of liens and of the persons named in such notices as owners or occupiers.

Notices of lien open to inspection

14. All notices of lien, and the indexes thereof, shall be open to inspection by any person during the hours and upon the days appointed for search in the General Registry Office, upon payment of the prescribed fee.

Liens to cease in certain events

15. Every lien under this Act 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 fourteen days from the registration thereof.

Satisfaction of lien to be recorded

16. The Registrar-General upon payment of the prescribed fee and 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 fourteen 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, shall make on the proper folium of the Register Book 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.

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

17. If the Registrar-General shall refuse to make the memorandum that any lien has ceased, the owner or occupier may apply to a judge of the Supreme Court or District Court or a magistrate in a summary manner 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 two clear 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.

Judge or magistrate may make order

18. Upon the hearing of such application the judge or magistrate 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 judge or magistrate.

Worker's Liens Act 1893

Enforcement of lien on goods under s. 4(2)

19. (1) Any person entitled to a lien under section 4 subsection (2) hereof 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 to 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 fourteen days after giving or leaving such notice, commence an action to enforce his lien, otherwise such lien shall cease.

Mortgagee may pay wages or contract price and may recover wages or contract price paid by him

20. 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, incumbrancee, 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 eight per centum 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 3—Legal procedure

Action to enforce lien or charge

21. 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.

Procedure in case of deposit

22. 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 fourteen 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.

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

23. 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.

Certificate of judgment *prima facie* evidence

24. 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 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.

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

25. (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.

Person affected by lien or charge may pay money into court

26. (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.

Worker's Liens Act 1893

Court may order detention, inspection etc

27. 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.

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

29. In any action to enforce a 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 in accordance with the rules of the court, and may grant relief in respect of such 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.

Person interested in subject matter may be made a party

30. 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.

Lienor may pay moneys due to mortgagee of chattels

31. (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.

Claim or registration may be cancelled

32. 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.

Penalty for claim with intent to defraud

33. 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, punishable, on summary conviction, by a penalty not exceeding one hundred dollars or by imprisonment (with or without hard labour) for a term not exceeding six months.

Penalty for vexatious claim

34. 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 not exceeding twenty dollars, as a court on a summary application may fix and determine.

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Jurisdiction etc of courts preserved

36. Nothing in this Act shall affect the provisions of the law for the time being relating to the jurisdiction and practice of a court, except where inconsistent with this Act or any regulation made hereunder.

Costs

37. The costs of all proceedings shall be in the discretion of the court in which such proceedings are taken, which may also make such order as it shall deem just in reference to proceedings preliminary to action in relation to the registration or discharge of liens and the giving of notices and otherwise, but, unless a court having jurisdiction in the matter shall for good cause otherwise order, any owner or occupier may charge upon and deduct from any contract price payable by him, as specified in section 6, his reasonable cost of obtaining the discharge of any lien and the making of a memorandum by the Registrar-General that any lien has ceased.

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Worker's Liens Act 1893

Part 4—Miscellaneous

Regulations

39. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

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Persons having lien at common law may sell

41. 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 in South Australia fourteen 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.

Application of proceeds of sale

42. (1) Upon any sale under the last preceding section 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 Magistrates Court to be held for the benefit of the person entitled to it.

(2) The Magistrates Court may, on the application of the person entitled to the surplus, order payment of the surplus to the person.

Wages of worker when deemed to be payable monthly

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

Other remedy not prejudiced

44. 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.

Penalty on attempt to deprive worker of lien on goods

45. 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 worker has a lien under this Act with intent to deprive such worker of his lien, or to delay such worker in the enforcement thereof, or in obtaining payment of his wages, he shall be guilty of an offence against this Act, punishable on summary conviction by a penalty not exceeding one hundred dollars, or by imprisonment (with or without hard labour) for a term not exceeding six months.

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Duties of Registrar-General

47. The Registrar-General and every officer under him shall be liable to the same penalties and consequences for neglect or default in respect of the duties imposed by this Act as if such duties were imposed under the Real Property Act.

Lands etc of Crown not affected by this Act

48. Nothing in this Act contained shall create or give any right or remedy against land vested in Her Majesty or in any person for or on behalf of the Government or increase or change the liability of Her Majesty, or of any person procuring the performance of work for or on behalf of the Government and, except as between the contractors, sub-contractors, and workers, this Act shall not apply to such work.

Act to apply to land under Real Property Act

49. Notwithstanding the provisions of the *Real Property Act 1886* this Act shall apply to land subject to the provisions of the said Real Property Act.

Worker's Liens Act 1893**APPENDIX****LEGISLATIVE HISTORY**

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 11 of The Public General Acts of South Australia 1837-1975 at page 630.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Long title:	amended by 44, 1988, s. 3
Section 1:	substituted by 44, 1988, s. 4
Section 2:	definition of "court" substituted by 33, 2002, s. 21 definition of "wages" amended by 44, 1988, s. 5(a) definition of "workman" amended by 44, 1988, s. 5(a)
Section 3:	omitted under <i>Legislation Revision and Publication Act 2002</i> 3.3.03
Section 4(1) and (2):	amended by 44, 1988, s. 5(a)
Section 6:	amended by 44, 1988, s. 5(b)
Section 7(1) and (4):	amended by 44, 1988, s. 5(a)
Section 8:	amended by 44, 1988, s. 5(b)
Section 10(3):	amended by 44, 1988, s. 6
Section 14:	amended by 44, 1988, s. 7
Section 16:	amended by 44, 1988, s. 8
Section 17:	amended by 33, 2002, s. 22
Section 18:	amended by 33, 2002, s. 23
Section 24:	amended by 44, 1988, s. 9
Section 28:	repealed by 44, 1988, s. 10
Section 29:	amended by 44, 1988, s. 11
Section 35:	amended by 44, 1988, s. 12; repealed by 33, 2002, s. 24
Section 36:	amended by 33, 2002, s. 25
Section 39:	substituted by 44, 1988, s. 13
Sections 40 and 40A:	repealed by 44, 1988, s. 14
Section 42:	amended and redesignated as s. 42(1) by 33, 2002, s. 26(a), (b)
Section 42(2):	inserted by 33, 2002, s. 26(b)
Sections 43 and 45:	amended by 44, 1988, s. 5(a)
Section 48:	amended by 44, 1988, s. 5(b)