



New South Wales

Warehousemen's Liens Regulation 2002

under the

Warehousemen's Liens Act 1935

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Warehousemen's Liens Act 1935*.

JOHN AQUILINA, M.P.,
Minister for Fair Trading

Explanatory note

This Regulation replaces, without any major changes in substance, the *Warehousemen's Liens Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) the notice to be given of claims as to the ownership of, or interest in, goods to be made under section 5 or 6 of the Act (clause 4),
- (b) the manner in which an application is to be made to a Local Court for a stay of proceedings leading to the sale of goods under a lien (clause 5),
- (c) the manner in which accounts are to be verified in relation to money paid to the Public Trustee from the proceeds of sale of goods under a lien (clause 6),
- (d) the charges deductible in respect of money held by the Public Trustee from the proceeds of sale of goods under a lien (clause 7).

This Regulation is made under the *Warehousemen's Liens Act 1935*, including sections 5, 6, 8 and 11 (the general regulation-making power).

This Regulation comprises matters of a machinery and savings or transitional nature.

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Warehousemen's Liens Regulation 2002

1 Name of Regulation

This Regulation is the *Warehousemen's Liens Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Warehousemen's Liens Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

the Act means the *Warehousemen's Liens Act 1935*.

4 Prescribed notice of claim under sections 5 and 6

The prescribed notice of claim referred to in sections 5 and 6 of the Act is a notice:

- (a) that is in writing, and
- (b) that identifies the goods to which it relates, and
- (c) that specifies the name and address of the person by or on whose behalf the claim is made, and
- (d) that specifies whether that person claims to be the owner of the goods or merely to have an interest in the goods and, if the latter is the case, the nature of the interest claimed.

5 Application for stay of proceedings

- (1) An application for a stay of proceedings under section 6 of the Act is to be made by means of a notice in writing lodged with the Clerk of the Local Court for the district in which the premises of the warehouseman are situated.
- (2) Such a notice must contain:
 - (a) a brief description of the goods, and
 - (b) a summary of the charges claimed by the warehouseman, and

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- (c) a summary of the reasons for which it is claimed that the proceedings should be stayed.
- (3) On receiving an application, the Clerk of the Local Court must appoint a time and place for the hearing of the application.
- (4) The applicant must cause notice of the time and place appointed for the hearing to be served on the warehouseman at least 2 days before the date of the hearing.
- (5) Service of such a notice may be effected in the same way as service of a summons may be effected under section 63 of the *Justices Act 1902* or (if the warehouseman is a company) in any way that complies with the requirements of the *Corporations Act 2001* of the Commonwealth in relation to the service of summonses.

6 Verification of statements of account

- (1) The copies of the statement of account that are furnished to the Public Trustee under section 8 (3) of the Act must be verified by the signature of the warehouseman or of some other person on the warehouseman's behalf.
- (2) Written particulars of the following matters must be furnished to the Public Trustee together with the copies of the statement of account:
 - (a) the date of deposit of the goods,
 - (b) the name and address of the person who deposited the goods,
 - (c) the name and address of the owner of the goods and of each person who claims to be the owner of the goods or to have an interest in the goods, including the name and address of any person who claims to be the holder of a bill of sale in respect of the goods,
 - (d) particulars of any such claim,
 - (e) particulars of any searches carried out by or on behalf of the warehouseman under the *Bills of Sale Act 1898*,
 - (f) such other relevant information as is in the possession of the warehouseman.

7 Charges payable to the Public Trustee

- (1) The Public Trustee is entitled to deduct the following charges from any amount held by the Public Trustee under section 8 of the Act:
 - (a) 5 per cent of the amount so held, or \$20, whichever is the greater,
 - (b) any fees prescribed under the *Public Trustee Act 1913* in relation to the amount so held.
- (2) The Public Trustee may waive or remit any charge to which the Public Trustee is entitled under this clause.

8 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Warehousemen's Liens Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.