

# Liens on Crops and Wool and Stock Mortgages Act 1898 No 7

[1898-7]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 January 2000 to 28 February 2006 (accessed 4 December 2024 at 20:03)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Liens on Crops and Wool and Stock Mortgages Act of 1898
- **Repeal**  
The Act was repealed by sec 36 (b) of the [Security Interests in Goods Act 2005 No 69](#) with effect from 1.3.2006.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Liens on Crops and Wool and Stock Mortgages Act 1898 No 7



New South Wales

An Act to consolidate Enactments relating to Liens on Crops and Wool and Stock Mortgages.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Liens on Crops and Wool and Stock Mortgages Act 1898*.

### 2 Repeal

The Acts mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

## Part 2 Lien on crops

### 3 Definitions

In this Part of this Act:

**agricultural produce** includes wheat, maize, sorghum, barley, oats, lucerne, and grass, whether for hay or grain, cotton, tobacco, rice, sugar-cane, and other agricultural produce.

**General Register of Deeds** means the General Register of Deeds maintained under Part 23 of the *Conveyancing Act 1919*.

**horticultural produce** means oranges and grapes, whether as fruit or for wine, and fruit of any other kind.

### 4 Lien on yearly crops

In all cases where any person makes any bona fide advance of money or goods to any holder of land on condition of receiving as security for the same the growing of crop or crops of agricultural or horticultural produce on any such land, and where the agreement relating to such security is made in the form or to the effect of the Second Schedule hereto, and purports on the face of it to have been made as security for such advance, and is duly registered within thirty days after its date in the General Register of Deeds, the

person making such advance, whether before, at, or after the date of such agreement, shall have a preferable lien upon, and be entitled to the whole of such crop and the whole produce thereof, and possession thereof by the lienor shall be to all intents and purposes in the law the possession of the lienee, and when such advance is repaid with interest specified in such agreement the possession and property of such crop shall revert to and vest in the lienor.

#### **5 Lien not affected by sale etc of land**

No such lien duly made and registered shall be extinguished or otherwise prejudicially affected by the death or bankruptcy of the lienor, nor by any sale or mortgage of, or other incumbrance upon the land on which any such crop is growing. And if such lienor, the lienor's executors, administrators, or assigns, neglects or refuses either to pay off the whole of such advance with interest as agreed upon, or to give up such crop to the lienee thereof in pursuance of the agreement, such lienee, the lienee's executors, administrators, or assigns, may enter into possession of such crop, and may gather, and carry away and sell the same, and may apply the proceeds in paying himself or herself such advance, with interest as aforesaid, and all expenses of gathering, carrying away, making marketable, and selling any such crop, and shall pay the balance to the lienor, the lienor's executors, administrators, or assigns.

#### **6 Lienee to pay rent of leased land before selling crop**

If the lienor be a leaseholder then the lienee shall, before selling any such crop, pay to the landlord of the land whereon such crop is growing such sum of money not exceeding one year's rent as may be due to the landlord for rent at the time of carrying away such crop, and the lienee may repay himself or herself the sum so paid out of the proceeds of the sale of such crop before paying over the balance to the lienor.

#### **7 Lienee to pay interest to mortgagee of land before selling crop**

If at the time of making any such lien there is in force a mortgage of the land whereon the crop subject to the lien is growing, and the land is at the time of harvesting such crop in the occupation of the mortgagee, the lienee shall, before selling any such crop, pay to the mortgagee the amount of interest (not, however, exceeding twelve months' interest) due upon such mortgage at the time of carrying away or selling such crop; and the lienee may repay himself or herself the sum so paid for interest out of the proceeds of the sale of such crop before paying over the balance to the lienor.

#### **8 (Repealed)**

#### **9 Duration of lien**

No lien under this Part of this Act shall continue in force for more than one year from the date thereof and the Registrar-General may, on the expiration of that period or at the request of both parties, register satisfaction of the lien in the General Register of Deeds and destroy the lien.

## **10 Penalties for frauds on lienee**

Any lienor, whether principal or agent, who, by sale or delivery of any crop affected by such lien, or of any part thereof, without the written consent of the lienee, or by any other means defrauds such lienee of such crop or the value thereof, or any part thereof, and thus or by any means directly or indirectly defeats, invalidates, or impairs the lienee's right of property in the same, shall be deemed guilty of an indictable offence, and shall be liable on conviction to a fine not exceeding three times the amount of the loss thereby sustained, or to imprisonment for any period not exceeding three years.

## **Part 3 Liens on wool and stock mortgages**

### **11 Right of lienee to wool as security or in payment**

In all cases where any person makes any bona fide advance of money or goods, or gives any valid promissory note or bill to any proprietor of sheep on condition of receiving in payment or as security only for such money, goods, promissory note, or bill, as the case may be, the wool of the then next ensuing clip of such proprietor, and where the agreement relating to such purchase or security is made in the form or to the effect in the Third Schedule appended to this Act, and purports on the face of it to have been made in payment or as security for such advance, and is duly registered within thirty days after the date of such agreement in the General Register of Deeds, the person making such purchase or advance shall be entitled to the whole of the wool mentioned in such agreement, whether such advance of money or goods, or of such note or bill is made before, at, or after the granting of any such preferable lien; and the possession of the wool by such proprietor shall be, to all intents and purposes in the law, the possession of the person making such purchase or advance; and when such advance is repaid, with such interest and commission as may be specified in any such agreement, the possession and property of the said wool shall revert in such proprietor.

### **12 Right of lienee to ensuing clip of wool**

- (1) Where any person makes any bona fide purchase or advance, as in the last preceding section mentioned, the preferable lien of the lienee making the same on the wool of the next ensuing clip of such proprietor shall not be in anywise extinguished, suspended, impaired, or otherwise prejudicially affected by any subsequent sale, mortgage, or other incumbrance whatsoever of the sheep mentioned and described in the registered agreement relating to any such preferable lien, nor by the subsequent bankruptcy of the lienor, but shall be as valid and effectual to all intents and purposes whatsoever against any such subsequent purchaser, mortgagee, incumbrancer, or other claimant or possessor of the said sheep, or against the trustees or assignees of such bankrupt lienor as against the original proprietor thereof who granted such preferable lien.
- (2) If any such lienor, subsequent mortgagee, or incumbrancer, trustee, or other claimant or possessor of such sheep neglects or refuses to shear and deliver the wool of any

sheep for which any such preferable lien shall have been granted as aforesaid in pursuance of the provisions in that behalf contained in such registered agreement, it shall be lawful for the lienee, the lienee's executors, administrators, or assigns to take possession of the sheep bearing such wool, for the purpose of washing and shearing the same; and all expenses attending such washing and shearing and conveyance of the wool to the place of abode of such lienee shall be incorporated with and be deemed in law part of the amount secured by such lien.

### **13 Right of mortgagee although mortgagor in possession**

All mortgages of sheep, cattle, and horses, which include the prescribed particulars, are made bona fide and for valuable consideration, and are registered in the General Register of Deeds within 30 days after the date of the agreement, are valid in the law to all intents and purposes whether the money secured by the said mortgage is payable presently or not, and notwithstanding that the said mortgaged live-stock are not delivered over to the mortgagee but remain and continue in every respect, as theretofore, in the possession, order and disposition of the said mortgagor, and though the said mortgagor afterwards takes the benefit of any law now or hereafter to be in force in New South Wales for the relief of bankrupt debtors:

Provided that no mortgage shall protect the same from the operation of any such law unless such mortgage shall have been executed at least sixty days before the date of the order for sequestration, or unless the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage.

### **14 Mortgagor of sheep may with consent of mortgagee give lien**

It shall be lawful for any mortgagor of sheep with the consent in writing of the mortgagee thereof, but not without such consent, to make and give a valid lien on the next ensuing clip of the wool of such sheep.

### **15 Liens and mortgages transferable by indorsement**

All liens on wool, and all mortgages of sheep, cattle, or horses shall be transferable by indorsement, and every indorsee thereof shall have the same right, title, and interest therein respectively as the original lienee or mortgagee.

### **16 (Repealed)**

### **17 Cancellation of lien on wool**

At the end of twelve months next after the expiration of the year for which any preferable lien on wool has been given as aforesaid, the Registrar-General may remove from the General Register of Deeds such preferable lien, and may destroy or cancel the same, or at any time at the request of both parties to any such preferable lien may register satisfaction of the lien in the General Register of Deeds.

## **18 Registration of satisfaction of mortgage**

In every case where the amount of principal and interest, or of the balance of principal and interest due upon any mortgage of sheep, cattle, or horses is paid to the person entitled to receive the same, or the person's agent in that behalf, and a receipt in writing for the amount so paid is given, signed by the person so entitled, or by the person's agent acknowledging such payment to be in satisfaction of the mortgage, the mortgagor, the mortgagor's executors, administrators, or assigns may cause the receipt to be registered in the General Register of Deeds; and from and after the time of the registration of the receipt such payment shall operate as an extinction of the mortgage, and of the right and interest thereby created, to all intents and purposes whatsoever, but without prejudice to any previous sale, or any conveyance in pursuance thereof, under such mortgage deed, and without prejudice to any second or subsequent mortgage affecting the same stock or any part thereof then duly registered, unless every party to the deed has, in writing at the foot of the receipt, signified the party's assent to the registration of such receipt.

## **19 Saving of rights and prerogatives of the Crown**

Nothing in this Part contained shall be construed to affect in any way the rights or prerogative of the Crown as to any of the waste lands described in any such liens or mortgages as the lands or stations where any such sheep, horses, or cattle may be depasturing.

## **20 Frauds by lienor, mortgagor or other person**

And whereas it is expedient, with a view to increase the public confidence in the validity of preferable liens on wool and mortgages of live-stock, to surround them with the penal provisions necessary for the punishment of frauds: Be it enacted that:

- (1) Any grantor of any preferable lien on wool under this Part, whether such grantor is principal or agent, who afterwards sells or delivers to any purchaser, pawnee, or other person, the wool under any such lien without the written consent of the lienee, or sells, steams, or boils down, or causes to be sold, steamed, or boiled down, without such written consent as aforesaid, the sheep whereon such wool is growing, with a view to defraud such lienee of such wool or the value thereof, or,
- (2) Any mortgagor of sheep, cattle, or horses, and their increase and progeny under this Part, whether such mortgagor is principal or agent, who, after the due execution and registry of any such mortgage, without the written consent of the mortgagee, sells and disposes of, or steams or boils down, or causes to be sold and disposed of or to be steamed, or boiled down, any sheep, cattle, or horses, or their increase or progeny, mentioned or described in any such mortgage, or,
- (3) Any such grantor or mortgagor, whether principal or agent, who in any way, or by any means whatever or howsoever, directly or indirectly, destroys, defeats, invalidates, or impairs, or any other person who wilfully and knowingly incites, aids, or abets any



such grantor or mortgagor, directly or indirectly, to defeat, destroy, invalidate, or impair the right of property of any lienee in the wool of any sheep mentioned and described in any such registered agreement as aforesaid, or the right of property of any such mortgagee as aforesaid in any sheep, cattle, or horses, or their increase and progeny, mentioned in any mortgage duly executed and registered as aforesaid under the provisions of this Part shall be severally held and deemed guilty of an indictable offence and being thereof duly convicted shall be severally liable in the discretion of the Judge or Court before whom any such offender shall be so convicted to fine or imprisonment, or to both fine and imprisonment, for any period not exceeding three years at the discretion of such Court or Judge.

## Part 4 General

### 21 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the [Liens on Crops and Wool and Stock Mortgages \(Amendment\) Act 1992](#).
- (3) A provision referred to in subsection (2) may, if the regulations so provide, take effect from the date of amendment or repeal of the related provision amended or repealed by the [Liens on Crops and Wool and Stock Mortgages \(Amendment\) Act 1992](#) or from a later date.
- (4) To the extent that a provision referred to in subsection (2) takes effect from a date that is earlier than the date of its publication in the Gazette the provision does not operate:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

## First Schedule

Year and Number of Act	Title of Act	Extent of Repeal
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7 Vic No 16	An Act to consolidate and amend the laws relating to the Registration of Deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip.	Such portions of secs 8, 10, 15, 18, 20, 22, and Schedule B as relate to stock, mortgages of stock, and liens on wool.
9 Vic No 28	An Act to give to valid mortgages of sheep, cattle, and horses priority for a limited period according to the date of the registration thereof, and for other purposes therein mentioned.	The whole.
11 Vic No 4	An Act to repeal an Act intituled <i>An Act to give a Preferable Lien on Wool from season to season, and to make mortgages of sheep, cattle, and horses valid without delivery to the mortgagee, and to substitute for a limited time other provisions in lieu thereof.</i>	The whole.
14 Vic No 24	An Act to continue for three years from the thirty-first day of December next, and from thence until the end of the next Session of the Legislative Council, an Act intituled <i>An Act to give a Preferable Lien on Wool from season to season, and to make mortgages of sheep, cattle, and horses valid without delivery to the mortgagee, and to substitute for a limited time other provisions in lieu thereof.</i>	The whole.
16 Vic No 11	An Act to give effect to Liens on Wool and mortgages on sheep, cattle, and horses.	The whole.
19 Vic No 4	An Act to continue the Lien on Wool Act for a period of five years.	The whole.
23 Vic No 9	An Act to make permanent the Lien on Wool Act.	The whole.
26 Vic No 10	An Act to legalize Preferable Liens on yearly crops.	The whole.
31 Vic No 24	An Act to amend the law relating to Preferable Liens on Wool and mortgages of sheep.	The whole.

## Second Schedule

(Section 4)

In consideration of the advance of \$        paid to me in money by (or value for which I admit to have received in goods from) C.D., of       , I do hereby give the said C.D. a preferable lien to the extent of the said advance on the crop (or crops) of [*here state the nature of the produce*] of this year, growing and to grow on the land [*here describe the land*] in New South Wales. It is further agreed that unless on or before the        day of 18   , I pay to the said C.D. the sum of \$        with interest thereon at the rate of        per centum per annum, the

said crop (or crops) shall be gathered, carried away, and made marketable by me or at my expense, and shall be delivered at \_\_\_\_\_, to the said C.D. or his or her order, in which event he or she may sell the same by [*here state mode and conditions of sale*], and from the proceeds may deduct the said sum and interest and all costs, and shall pay over to me the balance (if any), or if there be any deficiency may recover the same against me at law as any debt.

Dated \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_ .

Witness—

(Signed) A.B.

### **Third Schedule**

(Section 11)

In consideration of \$ \_\_\_\_\_, bona fide value for which I admit to have received in (money or goods or promissory notes, bills, or all or any of these, as the case may be) from C.D., of \_\_\_\_\_, I do hereby give the said C.D. a preferable lien to the extent of the said advance and interest at the rate of \_\_\_\_\_ per centum per annum, and commission at the rate of \_\_\_\_\_ per centum on the wool of the ensuing clip to be shorn from my flocks of sheep consisting in number of \_\_\_\_\_ or thereabouts, and now depasturing at \_\_\_\_\_ in New South Wales, under the superintendence of \_\_\_\_\_.

### **Fourth Schedule (Repealed)**