



Storage Industry Consultation Paper

Warehousemen's Liens Act 1958 Review

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1 Review of the Warehousemen's Liens Act 1958

1.1 Key points

The *Warehousemen's Liens Act 1958* (the **Act**) enables persons who store goods to recover the cost of storage where the person who deposits the goods does not pay for the storage or cannot be located.

Under the Act, a lien can be created to protect the ability of the warehouseman to recover their charges, and gives the warehouseman a power to sell the goods if the charges are not paid. The Act also deals with a situation where goods deposited by various persons are intermingled. For example, where grain is deposited in a silo containing deposits from other persons, the Act protects the ability of the owner to recover from the total bulk an amount equivalent to what they deposited.

It is proposed to review the Act in order to assess its use and effectiveness. It is also proposed to explore the impact of both uncollected goods legislation and personal property securities legislation on the scheme established by the Act to determine whether legislative changes are required.

The review will:

- explore the modern storage industry's use of the existing legislative scheme established under the Act;
- examine industry enforcement practices and any existing legislative barriers to recouping costs for uncollected goods left in storage; and
- recommend potential amendments that may be required to improve the operation of the legislation.

This paper seeks the feedback of industry and consumers on their experience with the Act and its role going forward.

1.2 How to get involved in the process

Interested persons and organisations are encouraged to make a submission on all or any parts of this consultation paper.

Forward submissions to:

Post:

Warehousemen's Liens Act Review
Policy and Legislation Branch
Consumer Affairs Victoria
GPO Box 123
MELBOURNE, Victoria 3001

Email:

cav.consultations@justice.vic.gov.au

Submissions must be received by **Friday 4 March 2016**.

Each submission will be considered on a case-by-case basis.

Submissions will be published on the Consumer Affairs Victoria website unless you expressly notify us that you do not wish for your submission to be published. However, it should be noted that all submissions may

be subject to Freedom of Information applications. Should this occur, the release of any material contained in a submission would be assessed on its merits.

1.3 Key questions for industry consideration

- 1 What is your level of awareness of the Act?
- 2 Have there been any issues in enforcing the right to sell goods pursuant to a warehousemen's lien? If so, what problems generally arise and how could the legislative scheme be framed to solve such issues?
- 3 What is working well about the current Act and what needs to be improved?
- 4 Do you provide notice to the depositor of goods informing them of your right to sell the depositor's goods under the Act? If so, what form does this notice take?
- 5 When seeking to recover your costs for goods that have not been collected by a depositor, do you rely on the provisions of the Act, the uncollected goods scheme under the *Australian Consumer Law & Fair Trading Act 2012* or both?

A summary of all questions presented is available in Part 5 of this paper.

1.4 Key questions for consumers' consideration

- 1 What are the common issues, if any, that arise for consumers of storage services?
- 2 Does the Warehouseman's Liens Act provide clarity to consumers of storage services of their rights and obligations under the Act? What needs to be improved?
- 3 Have you had any issues with retrieving goods from a storage service?
- 4 Have you had any issues giving notice to a storage service (or receiving notice from a storage service) under the Act?

2 Regulatory and Policy Framework

This section of the consultation paper details the background to the current legislative regime and identifies the current issues. There are a series of key questions at the end of each section to assist stakeholders in responding to the consultation paper.

2.1 Warehousemen's Liens Act 1958

2.1.1 Background

The *Warehousemen's Liens Act 1958* (the **Act**) enables persons who engage in the business of storing goods (the **warehouseman**) to recover the cost of storage where the person who deposited the goods (the **depositor**), such as the owner of the goods or their agent, does not pay them or cannot be located. The primary purposes of the Act are to allow for the creation of a warehousemen's lien, outline a warehouseman's power to sell goods to recover storage costs and establish ownership arrangements in intermingled goods stored with a warehouseman.

A warehouseman is defined under the Act as a person who is lawfully engaged in the business of storing goods as a bailee for hire or reward. The modern storage business falls under this definition. A bailment is a legal relationship between two parties where the depositor gives the property to another person for repair or treatment in some way, but the depositor retains ownership in those goods.

Under the Act, a warehouseman obtains an interest called a lien over goods deposited with them which allows the warehouseman to sell the deposited goods to recover storage charges and claims for insurance, transportation, labour and other expenses in relation to the goods.

A lien is a property interest which arises in favour of a person in possession of goods (such as the warehouseman) belonging to another person (the depositor or owner of goods). The lien allows the warehouseman to retain possession of those goods until certain debts owed by the depositor or owner to the warehouseman have been paid.

There is no recognised lien in favour of warehousemen at general law. However, a lien may be created by statute, as is the case with the Act.

The lien can be enforced in situations where the depositor does not return to collect the goods or does not pay the storage fees and other expenses to the warehouseman. Under the Act, there are a number of steps that must be followed before the goods can be sold:

- notice of the warehousemen's lien and power of sale must be given by the warehouseman to the depositor, and any other person with an interest in the goods, within two months of the deposit of goods for storage;
- a period of 12 months must elapse from the time that the charges became overdue; and
- advertisements proposing the sale of the goods must be published each week for two weeks before the sale.

Questions

1. What is your level of awareness with the *Warehousemen's Liens Act 1958*?
2. Is the effect of the Act well understood within your business?
3. How often does your business rely on the power of sale under the Act each year?

2.1.2 Historical development

The introduction of the *Warehousemen's Liens Act 1938* (replaced by the current Act in 1958) followed the New South Wales Storage Liens Act 1935 legislation (the NSW Act). The NSW Act was developed during the Great Depression in 1934 and was a response to the economic crises of the time.

Warehouses in New South Wales were experiencing major difficulties due to a flood of goods, particularly furniture, stored by individuals who either could not pay the storage fees, or failed to collect the stored goods. Unemployed individuals looking for work in rural areas and interstate found it necessary to leave their personal belongings in storage if they had no other place to keep them. However, the warehouses found themselves unable to respond to the influx of goods and the failure of depositors to pay – a warehouseman could not use the goods, as that would be unlawful, nor could the goods be sold. To sell the goods would expose the warehouseman to being sued by an owner claiming the goods at a later date.

The issue of uncollected stored goods was known to involve goods that had not been collected for over 20 years. The warehousemen incurred substantial costs over the period of storage, including for fumigation to prevent vermin and maintenance of floor space. As such, warehousemen faced mounting costs as goods entered and remained in storage.

The NSW Parliament sought to address this issue by legislating the creation and enforcement of a statutory warehousemen's lien, following the example of similar legislation from Canada's provinces.

2.1.3 Current issues

Consumer Affairs Victoria (CAV) has identified four main issues with the Act, which form the basis of this consultation paper. The paper also considers the Act's interaction with two other legislative schemes; the *Personal Property Securities Act 2009* and the uncollected good scheme under the *Australian Consumer Law and Fair Trading Act 2012*. Industry consultation will allow CAV to better understand how the storage industry functions in light of these perceived issues.

Issue 1: Necessity of notice by warehouseman

The warehouseman must give notice of the warehouseman's lien to the depositor (who is usually the owner) and any other person with an interest in the goods, before the lien can be enforced to recover outstanding charges.

Two notices must be served—

- the first notice is served on the warehouseman by the depositor of the goods or the owner (or other persons with an interest in the goods). It gives notice that the depositor, owner or other person claims an interest in those goods (the **depositor's notice**);
- the second notice is served by the warehouseman on the depositor of the goods, and also on any other person that warehouseman knows has an interest in the goods, even if that person did not serve a notice on them (the **warehouseman's notice**).

The purpose of the depositor's notice is to make the warehouseman aware of any interests claimed by other persons in relation to the stored goods.

If the depositor's notice is not given to the warehouseman, the warehouseman may not be aware of that person's interest in the goods and their right to receive other forms of notice regarding the goods from the warehouseman. For example, the warehouseman may fail to provide a notice that the warehouseman is exercising the power of sale because the warehouseman is unaware of a particular person's interest in the goods.

The purpose of the warehouseman's notice is to inform persons claiming an interest in the goods of the warehouseman's power to sell the goods to recover unpaid storage charges.

Importantly, the warehouseman's notice must be served within two months of the goods being deposited for storage. If no notice is given, the lien becomes "void" and unenforceable as from the date two months from the date of deposit.

The warehouseman's notice must be in the prescribed form and contain—

- a brief description of the goods;
- a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman and the name of the person who deposited the goods;
- a statement that the lien is claimed by the warehouseman in respect of the goods under the Act; and
- any other prescribed particulars.

These forms were previously set out in the Warehousemen's Liens Regulations 1982. However, these expired in 1992 and have not been renewed since.

Despite the lack of regulations, CAV has not been made aware of any significant issues being experienced by the industry in enforcing the lien.

This may be because the Act nevertheless enables a court to consider whether the lien should still be enforceable where notice has been given but the particulars of that notice are not in strict compliance with the Act or regulations (if any).

CAV is now seeking feedback from industry about how the requirement to provide notice is currently being satisfied and whether particular storage businesses have experienced any difficulties in enforcing a lien.

Questions

4. Do you provide notice to the depositor of goods or other people with a known interest in the goods informing them of your rights to a lien under the Act?
5. If so, what form does this notice take?
6. What information do you include in your notice?
7. Have you had to enforce a lien under the Act? If yes, did you experience any difficulties?
8. Do you ever have third parties asserting an interest over goods deposited with you for storage? If yes, how do they advise you of their interest in the goods?
9. Are there benefits in retaining the requirement on people with an interest in stored goods to give notice to warehousemen of their interest?

Issue 2: Power to sell goods

The Act sets out a procedure for a warehouseman to sell goods over which he or she has a lien. The goods cannot be sold until some part of the charges have been unpaid for at least 12 months.

Before the goods can be sold, a warehouseman must provide written notice of his or her intention to sell the goods to any person who is liable to pay charges to the warehouseman for storage of the goods, any person who has served the depositor's notice referred to in 2.1.3 and any other person of whose interest in the goods the warehouseman has knowledge.

This intention-to-sell notice is not prescribed but must be a written notice given personally or by registered post and must contain—

- a description of the goods;
- a statement showing the location of the warehouse where the goods are stored, the date of their deposit and the name of the person who deposited them;
- an itemized statement of the warehouseman's charges showing the outstanding charges at the time of the notice;
- a demand that the outstanding charges (and any further charges that may accrue) be paid by a certain date specified in the notice (which must not be less than one month of the delivery of the notice); and
- a statement that unless the outstanding charges are paid, the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

If the charges remain unpaid, the warehouseman must publish an advertisement of the sale describing the goods to be sold and stating the time and place of the proposed sale at least once a week for two consecutive weeks in a newspaper circulating in the locality where the sale is to be held and in one daily newspaper in Melbourne. The sale must take place within fourteen days from the date of publication of the first advertisement.

As there is currently no alternative method of sale prescribed by regulations, the only way in which goods can be sold under the Act is by public auction. CAV is seeking feedback from the industry as to whether this is the most appropriate method for sale of goods.

CAV is also interested in how the industry determines who may have an interest in the goods and makes them aware of the upcoming auction of the goods.

The Magistrates' Court may make an order preventing or delaying a sale. A person having an interest in the goods must make an application to the Court in the prescribed form. Given the absence of regulations, it is unclear whether this power is relied upon. CAV is seeking feedback on whether the industry has experienced anyone seeking to use the courts to prevent an auction of goods from proceeding.

It should be noted that even if a notice of intention to sell has not been strictly complied with, the sale of the goods is still effective if a court considers that the above requirements have been substantially complied with or that it would be inequitable for the sale not to be allowed to proceed.

Questions

10. Do you provide notice to the depositor of goods or other people with a known interest in the goods informing them of your intention to enforce your lien by selling the goods?
11. If so, what form does this notice take?
12. What information do you include in your notice?
13. How do you make third parties aware of upcoming auctions?
14. Is public auction the most appropriate method for the sale of goods deposited for storage?
15. Are the notice and advertising requirements under the Act appropriate?
16. Is the requirement that there must be at least 12 months' worth of unpaid charges before a lien can be enforced too long or too short?
17. Have you experienced any difficulties with the power of sale provisions under the Act?
18. Is it common for a power of sale to be challenged at court? Do you have any knowledge or experience with any such challenges?

Issue 3: Proceeds of sale and satisfaction of a lien

The proceeds of the sale are applied first towards satisfying the warehousemen's lien. Any surplus must be paid within 10 to 14 days after the sale to persons entitled to the surplus (the **claimants**). Where there are conflicting claims to the surplus, or the rights of any claimant are uncertain, the warehouseman is required to pay the surplus into the County Court and the County Court may apply the money as it thinks fit. Where no claim is made for the surplus within 10 days of the sale, the warehouseman must pay the surplus to the Registrar of Unclaimed Money within 14 days of the sale.

The warehouseman is required to produce a statement of account showing how the surplus has been calculated, and this statement of account is to be provided to the claimants, County Court or Registrar of Unclaimed Money as the case may be. The Act enables regulations to be made prescribing a manner for verifying these calculations and other particulars relating to the transaction.

Any warehouseman who fails to pay any money into the County Court or to the Registrar of Unclaimed Money is liable for a penalty of 1 penalty unit for every day that the money is unpaid.

Questions

19. What is your experience of dispensing money after the sale of goods in satisfaction of a lien?
20. Is a surplus common?
21. How do you determine who receives the proceeds of any surplus?
22. What documentation do you provide to support the calculation of the charges you have incurred?
23. Are you asked to verify the information you provide?

Issue 4: Intermingled goods

The intermingled goods provisions deal with goods that have been deposited with a warehouseman by their owner and have become intermingled with other goods of the same kind so as to form a single bulk quantity (for example, grain deposited for storage). This section was introduced in 2009 following similar amendments made in NSW to protect suppliers and purchasers of mixed goods in the event a bulk storage operator goes into liquidation.

Unless the parties agree otherwise, once goods are deposited in a warehouse and become intermingled with other goods, the owner becomes co-owner of the bulk intermingled goods, with an undivided share equivalent to the quantity of goods that he or she originally deposited.

The obligations that each co-owner and the warehouseman would have had if the goods had not become intermingled continue to apply. Therefore, the warehouseman's obligation to deliver back the owner's goods becomes an obligation to deliver an equivalent quantity of goods from the bulk to each co-owner. Once a person becomes a co-owner he or she consents to any delivery out of the bulk to any of the other co-owners. Where the bulk is of insufficient size to allow all owners to receive a full amount, each co-owner's share in the bulk is reduced proportionately.

Questions

24. Have you had experience in relying on the intermingling provisions of the Act?
25. If so, have you found them to be useful in clarifying rights and avoiding disputes?

2.2 Interaction between warehousemen's liens and the Personal Property Securities Act 2009 (Cth)

The Personal Property Securities Act 2009 of the Commonwealth (the **PPSA**) is the national law regulating security interests in personal property. Personal property includes various types of tangible and intangible property and does not include any interests in land. Examples of personal property include motor vehicles, household appliances, jewellery, artwork and business inventory. As a base position, the PPSA applies to liens created by the Act if the owner of the goods agrees, either expressly or impliedly, to the lien being created over the goods.

The PPSA regulates security interests over personal property. A security interest refers to a right over property that is usually created by agreement or operation of law. An example of a security interest is a charge or mortgage that a finance provider takes over a car as part of its loan to the car's owner to enable him or her to buy the car. For the purposes of the PPSA, the finance provider that is able to enforce the security interest is referred to as the 'secured party'. The security interest allows the secured party to take possession of the car to sell it to recover moneys owing on the loan if the owner defaults on repayments.

The PPSA also regulates the priority between different security interests in the same goods. Priority refers to a secured party's right to be first or ahead of the rights of other creditors (being other persons or companies

to whom money is owing). For example, a security interest with priority would entitle the secured party to access the proceeds of sale of an item before other parties. For this purpose the PPSA establishes the Register of Personal Property Securities, which allows secured parties to give notice of existing security interests, or security interests that they are in the process of creating.¹

The Storage Act 1935 in New South Wales provides that a warehousemen's lien over property has priority over any other interest in the property and displaces the priority rules set out in the PPSA. As a result, in NSW a person cannot take action to enforce a PPSA security interest if the action is inconsistent with warehousemen's liens legislation.

The Victorian Act is silent on the issue of priority. A warehouseman can satisfy their lien from the proceeds of sale, but the Act does not clearly establish that the warehousemen's lien takes priority over other interests. The Act does not require a court to give priority to the interests of warehousemen. However, it is possible that a lien created under the Act and perfected by possession of the goods could be treated as having priority, meaning the warehousemen's lien would take priority over a subsequent registered security interest.

CAV is interested in whether the introduction of the PPSA has made any difference to the way in which priority of competing interests is determined when a warehouseman exercises a power of sale. In particular, whether in practice the warehouseman's lien receives priority over other interests, including registered security interests under the PPSA.

Question

26. Have you experienced issues with exercising the warehousemen's lien power of sale where there have been competing security interests over the stored goods?

27. Do you use the Personal Property Securities Register to check whether goods deposited with you have any registered security interests?

28. Are there any obvious differences in enforcement of warehousemen's liens between NSW and Victoria?

2.3 The Uncollected Goods Scheme

2.3.1 Background

Part 4.2 of the *Australian Consumer Law and Fair Trading Act 2012* (comprising the **uncollected goods scheme**) provides for the disposal of uncollected goods that have been provided to a person under a bailment.

The uncollected goods scheme allows persons such as dry cleaners and mechanics to dispose of goods received by them to recover outstanding fees and charges. The scheme applies as between a 'provider' of goods to a 'receiver' (such as a warehouseman) where the goods provided are uncollected for the purposes of the scheme. Goods are considered uncollected where:

- the provider does not collect the goods when ready for delivery in accordance with the contract and there are no arrangements for delivery;
- the receiver of the goods is unable to contact or locate the provider when the goods are ready for delivery; and
- the provider has not paid the relevant fees or charges payable to the receiver after the goods are ready for delivery.

¹ A brief summary of the scheme is available at section 3 of the Personal Property Securities Act 2009.

A receiver of goods may dispose of those goods if they are uncollected. There are a number of scenarios where uncollected goods may not be disposed of, including where there is a dispute between the provider and receiver regarding the relevant charges, and where an application has been made to a court to stop the disposal. The uncollected goods scheme could be used to dispose of goods deposited with a warehouseman or storage business.

The manner in which goods may be disposed depends on the value of the goods. The uncollected goods scheme provides for a number of pre-disposal requirements which differ depending on whether the goods are low, medium or high value. For example, low value goods require written notice be given to the provider of those goods; high value goods require that written notice be given to the provider, any registered secured party, the owner of the goods and any other person having or claiming an interest in the goods of which the receiver is aware.

2.3.2 Historical development

Previously under common law, disposal of the goods under bailment could only take place by way of an express agreement between the owner of the goods and the person who received those goods. The common law was focused on persons who worked on or treated the goods in some way (such as a watch repairer or cobbler). The difficulty with this is that the parties often did not anticipate that the provider of goods might not return to collect the goods, and neglected to provide for that event in their agreement. This caused great inconvenience when the goods remained uncollected and the receiver of goods was unsure of their rights and obligations over the provider's goods.

The Parliament of Victoria therefore introduced the *Disposal of Uncollected Goods Act 1961* which provided businesses with the procedures to be followed to dispose of, sell and be compensated for, uncollected goods left with them for repair or treatment without payment by the customer. The primary objective was to remove the anomalies existing in the common law, such as the limited rights of disposal under a bailment, and the concept of abandonment.

A 2009 review of the Disposal of Uncollected Goods Act identified the following issues:

- The use of outdated and overly legalistic language, such as reference to parties as 'bailee' and 'bailor';
- The coverage of the Act being limited to goods left for 'repair or treatment' which applies only to goods subjected to some form of physical or chemical treatment, such as the repair of a car or dry-cleaning of clothes – this did not cover stored goods; and
- The disposal processes were time consuming and impractical. Notices were to be sent to the owner at least a month after the goods became available for collection, notices for intention to sell had to be circulated in the newspaper regardless of the value of the goods and the goods had to be stored safely during these processes.

As a result of this review, the Disposal of Uncollected Goods Act was updated and consolidated into the Australian Consumer Law & Fair Trading Act.

The previous Disposal of Uncollected Goods Act was clearly limited to repairers that took possession of goods for a time to work on them. The current uncollected goods scheme removed this limitation but leaves open the extent to which it can apply to general storage.

2.3.3 Comparison with the *Warehousemen's Liens Act 1958*

The uncollected goods scheme under the Australian Consumer Law & Fair Trading Act and the Warehousemen's Liens Act both function to regulate the sale of goods for the recovery of fees and charges. The table in Part 6 summarises the differences and similarities between the Act and the uncollected goods scheme.

The primary defining characteristic of the Act is the creation of a statutory interest as discussed in 2.1.1. Conversely, the uncollected goods scheme does not create an interest (such as a security interest) at law – it instead gives the warehouseman a right to sell the goods to recover the charges owed to him. A statutory interest in goods may give the warehouseman priority over other later security interests. For example, where a warehouseman holds goods that are subject to another creditor’s security interest the sale proceeds may first be applied to satisfy the charges owed to the warehouseman. Other parties would then receive the remainder of the proceeds in the chronological order that each received an interest in the goods.

The uncollected goods scheme provides a more flexible route of recovery than the Act. The Act requires that the charges in respect of the goods be outstanding for at least 12 months before the warehouseman can enforce the lien. Under the uncollected goods scheme, a receiver may dispose of uncollected goods after a relatively shorter period, ranging from 28 days to 180 days, depending on the circumstances and value of the goods.

The recovery provisions under the uncollected goods scheme impose a lower requirement to provide notice to providers and owners than under the Act. For example, low value uncollected goods require a receiver to provide notice only to the provider of those goods. This requirement is extended as the value of the goods increases. Unlike under the Act, the receiver is not required to provide notice to the provider that they can sell the goods to recover charges owed to them.

Under the Act, a warehouseman is able to open sealed or closed boxes to determine the contents for the purposes of advertising the sale of goods subject to a lien. This allows the warehouseman to determine the content and value of the goods within sealed boxes. The uncollected goods scheme does not have an equivalent provision to open sealed boxes and therefore may be limited in how useful it is to a warehouseman or storage business.

As part of this review, it is essential to determine the extent of the storage industry’s use of the uncollected goods scheme, if any, and the practical benefits achieved from this use rather than the Act.

Questions

29. When seeking to recover your costs for goods that have not been collected by a provider, do you rely on the provisions of the Warehousemen’s Liens Act 1958, the uncollected goods scheme under the Australian Consumer Law & Fair Trading Act 2012 or both?

30. In the context of your business, does the uncollected goods scheme have any particular advantages over the current Warehousemen’s Liens Act?

31. If so, which provisions of the uncollected goods scheme do you consider essential to effective recovery of fees and charges?

3 Consumer Feedback

The focus of the questions in this paper are on the industry’s use and familiarity with the Act. However, this review is also interested in the consumer experience with the Act, the uncollected goods scheme and the PPSA.

The key questions for consumers' consideration are:

- 1 What are the common issues, if any, that arise for consumers of storage services?
- 2 Does the Warehouseman's Liens Act provide clarity to consumers of storage services of their rights and obligations under the Act? What needs to be improved?
- 3 Have you had any issues with retrieving goods from a storage service?
- 4 Have you had any issues giving notice to a storage service (or receiving notice from a storage service) under the Act?

4 Next Steps

The effectiveness of this review will be determined by the responses to the questions presented in this paper. After the final submission date for this paper, Consumer Affairs Victoria will review all submissions and consider any necessary changes that may need to be made to the Act and uncollected goods scheme.

Consumer Affairs Victoria will engage in further public consultation in relation to any proposed changes. You will have a further opportunity to provide feedback on the review and this feedback will assist in preparation of the final product.

Submitting your feedback

Your submissions in response to the questions presented above would be greatly appreciated.

Forward submissions to:

Post:
Warehousemen's Liens Act Review
Policy and Legislation Branch
Consumer Affairs Victoria
GPO Box 123
MELBOURNE, Victoria 3001

Email:
cav.consultations@justice.vic.gov.au
Submissions must be received by **Friday 4 March 2016**.

Each submission will be considered on a case-by-case basis.

5 Summary of questions to consider

5.1.1 Questions for industry consideration

Background to the Warehousemen's Liens Act

1. What is your level of awareness with the Warehousemen's Liens Act 1958?
2. Is the effect of the Act well understood within your business?
3. How often does your business rely on the power of sale under the Act each year

Necessity of notice by warehouseman under the Act

4. Do you provide notice to the depositor of goods or other people with a known interest in the goods informing them of your rights to a lien under the Act?
5. If so, what form does this notice take?
6. What information do you include in your notice?
7. Have you had to enforce a lien under the Act? If yes, did you experience any difficulties?
8. Do you ever have third parties asserting an interest over goods deposited with you for storage? If yes, how do they advise you of their interest in the goods?
9. Are there benefits in retaining the requirement on people with an interest in stored goods to give notice to warehousemen of their interest?

Power to sell goods

10. Do you provide notice to the owner of goods or other people with a known interest in the goods informing them of your intention to enforce your lien by selling the goods?
11. If so, what form does this notice take?
12. What information do you include in your notice?
13. How do you make third parties aware of upcoming auctions?
14. Is public auction the most appropriate method for the sale of goods deposited for storage?
15. Are the notice and advertising requirements under the Act appropriate?
16. Is the requirement that there must be at least 12 months' worth of unpaid charges before a lien can be enforced too long or too short?
17. Have you experienced any difficulties with the power of sale provisions under the Act?
18. Is it common for a power of sale to be challenged at court? Do you have any knowledge or experience with any such challenges?

Proceeds of sale

19. What is your experience of dispensing money after the sale of goods in satisfaction of a lien?
20. Is a surplus common?
21. How do you determine who receives the proceeds of any surplus?
22. What documentation do you provide to support the calculation of the charges you have incurred?
23. Are you asked to verify the information you provide?

Intermingled goods

24. Have you had experience in relying on the intermingling provisions of the Act?
25. If so, have you found them to be useful in clarifying rights and avoiding disputes?

Interaction between warehousemen's liens and the Personal Property Securities Act

26. Have you experienced issues with exercising the warehousemen's lien power of sale where there have been competing security interests over the stored goods?
27. Do you use the Personal Property Securities Register to check whether goods deposited with you have any registered security interests?
28. Are there any obvious differences in enforcement of warehousemen's liens between NSW and Victoria?

The uncollected goods scheme

29. When seeking to recover your costs for goods that have not been collected by a provider, do you rely on the provisions of the Warehousemen's Liens Act 1958, the uncollected goods scheme under the Australian Consumer Law & Fair Trading Act 2012 or both?
30. In the context of your business, does the uncollected goods scheme have any particular advantages over the current Warehousemen's Liens Act?
31. If so, which provisions of the uncollected goods scheme do you consider essential to effective recovery of fees and charges?

5.1.2 Questions for consumers' consideration

1. What are the common issues, if any, that arise for consumers of storage services?
2. Does the Warehousemen's Liens Act provide clarity to consumers of storage services of their rights and obligations under the Act? What needs to be improved?
3. Have you had any issues with retrieving goods from a storage service?
4. Have you had any issues giving notice to a storage service (or receiving notice from a storage service) under the Act?

6 Table of Comparison – Warehousemen’s Liens Act and uncollected goods scheme

	Warehousemen’s Liens Act 1958	Part 4.2, Australian Consumer Law and Fair Trading Act 2012 (uncollected goods scheme)	Comparison
To whom does the scheme apply?	The Act applies to a <i>warehouseman</i> – defined as a person who lawfully engages in the business of storing goods as a bailee for hire or reward.	<p>The uncollected goods scheme applies as between the following parties:</p> <ul style="list-style-type: none"> • a <i>provider</i>, being the person who gives possession of goods under a bailment; and • a <i>receiver</i>, being the person who takes possession of goods under a bailment (eg. the warehouseman). 	<p>The uncollected goods scheme applies to a broader range of scenarios comprising the receiver/provider bailment relationship.</p> <p>The Act applies only to warehousemen who are engaged in the storage of goods as a bailee for value, as opposed to the uncollected goods scheme which can include a gratuitous bailment.</p>

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<p>When does the scheme apply?</p>	<p>Every warehouseman has a lien on goods deposited with them for storage. The term ‘goods’ includes personal property of every kind that may be deposited for storage with a warehouseman as bailee.</p> <p>The lien will arise automatically upon deposit, but its enforcement relies on notice being given by the warehouseman to each person who has an interest in the goods within 2 months of the deposit.</p> <p>The lien may be enforced after the relevant charges in relation to storage of the goods have been unpaid for 12 months. The warehouseman may then begin to exercise the power of sale under the Act.</p>	<p>The uncollected goods scheme provides that the rights under the scheme will arise when the goods under bailment become uncollected.</p> <p>The situations provided are:</p> <ul style="list-style-type: none"> • the goods are ready for delivery to the provider in accordance with the terms of the bailment, but the provider has not taken delivery of the goods and has not given directions as to their delivery; • the receiver is required to give notice to the provider when the goods are ready for delivery but cannot locate or communicate with the provider; • the receiver can reasonably expect to be relieved of any duty to safeguard the goods on giving notice to the provider but cannot locate or communicate with the provider; or • the provider has not paid the relevant charge payable to the receiver in relation to the goods within a reasonable time after being informed by the receiver that the goods are ready for delivery. 	<p>A warehousemen’s lien arises automatically from the deposit for storage, but requires that notice is given to the relevant parties to ensure that the lien can be enforced.</p> <p>The uncollected goods scheme will only apply where the relevant goods are ‘uncollected’ for the purposes of the uncollected goods scheme.</p> <p>For example, the goods will be uncollected where the provider has failed to pay the storage charges to the warehouseman after being given notice by the warehouseman that the goods are ready to be picked up.</p>

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<p>What rights are afforded by the scheme?</p>	<p>The lien allows the warehouseman to sell the goods to recover certain lawful charges owed to the warehouseman in relation to the goods. These charges include:</p> <ul style="list-style-type: none"> • storage and preservation of goods; • insurance, transport, labour, weighing and packing; • reasonable charges for notices required to be given by the Act. <p>The power of sale is exercised by public auction but regulations can be made setting out other ways. There are a number of requirements for the exercise of this power, including giving notice, advertising and sale timing.</p> <p>A warehouseman is able to open sealed boxes to identify the contents of unidentified stored goods.</p>	<p>The uncollected goods scheme allows a receiver to dispose of the goods under bailment to recover charges for:</p> <ul style="list-style-type: none"> • carriage or storage of the goods; • repairs, cleaning, treatment of other work done on the goods' • amount of costs for any storage, maintenance or insurance of the goods incurred by the receiver (in the period from giving notice of sale until disposal of the goods). <p>The receiver cannot dispose of goods if:</p> <ul style="list-style-type: none"> • a dispute exists between the provider and receiver regarding the relevant charge; or • an application has been made to a court under the scheme. <p>The power of disposal and the requirements to exercise that power depend on the value (low/medium/high) of the goods. Disposal of higher value goods imposes greater requirements upon the receiver to give notice and to exercise certain methods of disposal.</p>	<p>The charges recoverable by the warehousemen's lien and uncollected goods scheme are similar.</p> <p>The primary difference as to the rights granted by each relate to the exercise of the power of sale.</p> <p>The Act does not distinguish between lower and higher value goods. The requirements, such as for advertising and notice, that the warehouseman has to comply with are generally more onerous under the Act than the uncollected goods scheme.</p> <p>The warehousemen's lien may only be enforced when charges are 12 months overdue from the date of the intention to sell the goods.</p> <p>The uncollected goods scheme is not without restriction – the power to dispose of the uncollected goods cannot be exercised where there is a dispute between the receiver and provider as to the charges claimed by the receiver.</p> <p>The Act provides a storer with the ability to open sealed boxes to identify the contents. This is often necessary to assess the value of the goods.</p>

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When are the rights extinguished?	<p>A person with an interest in the goods can pay the warehouseman the outstanding charges to satisfy the lien.</p> <p>A warehousemen's lien may also be satisfied from the proceeds of sale of the goods. The proceeds in excess of value of the charges must be distributed to persons with an interest in the goods along with a statement of account. Any unclaimed excess must be paid to the Registrar of Unclaimed Money.</p>	<p>The provider, owner of the uncollected goods or any other person with an interest in the goods is entitled, on payment of the relevant charge, to the return of their goods any time before disposal.</p> <p>Upon disposal under the uncollected goods scheme, the goods are no longer uncollected.</p> <p>The balance, if any, of the proceeds of sale are to be dealt with as if the money was unclaimed money.</p> <p>If there is a shortfall to pay charges and disposal costs, the receiver may recover the shortfall as a debt in court.</p>	<p>Sale of the goods, and the receipt of any amount of money for those goods, satisfies and extinguishes the warehousemen's lien upon receipt of the proceeds regardless of whether the proceeds are sufficient to pay the outstanding charges. A warehouseman must then take action to recover the remainder owed as a debt in court.</p>