

# REPAIRER'S LIEN

---

*This information sheet provides general information on what a lien is and when a repairer has a right to exercise a lien.*

## **What is a Lien?**

A lien is a right existing in common law in relation to work done that allows a person who improves goods to retain the good until full payment for the work done is made. For example, if a repairer has worked on and improved a vehicle, then the repairer is not required to release the vehicle until payment is made to the repairer.

## **When does the Lien Arise?**

Generally, a repairer's lien applies where:

- a repairer receives goods for repair/improvement; and
- the goods have been provided by the owner or a person with authority; and
- the goods have been repaired/improved (or increased in value), by a person with the required skills; and
- possession of the goods has remained with the repairer at all times.

It is important that the vehicle is not released before payment is made, because the repairer's right to a lien is lost once the vehicle is no longer in the possession of the repairer. If the vehicle is released the vehicle cannot be retrieved at a later time. The work must also be completed for the right of a lien to arise. The right of a lien only extends to work on the vehicle and does not extend to any other outstanding debts.

## **The Requirement that an Improvement is made to a Vehicle**

While assessing an issue with a vehicle is skilled work, there is a question as to whether it amounts to an improvement in the vehicle or an increase in value which is required to repairer to have the right to exercise a lien over the vehicle.

Caselaw distinguishes between 'improvement' and 'maintenance', noting that a lien arises where a vehicle is improved or increased in value, but not where the good is merely maintained (even where labour and skill are expended in maintaining the good). This gives rise to complex considerations as to whether assessing a vehicle to identify an issue with the vehicle, without conducting repairs on the vehicle, is sufficient to give rise to a repairer's right to exercise a lien.

However, it is more likely that a lien will not arise where a repairer has assessed a vehicle to identify an issue without conducting repairs. There is a high risk that where a repairer retains a vehicle in circumstances where repairs have not been conducted on the vehicle, the repairer may not be able to rely on the lien to justify their action as lawful.

## **Storage Fees and Disposal**

The repairer's lien does not give the repairer a right to charge storage fees or to dispose of the vehicle. If the repairer would like to dispose of the vehicle the repairer should do so under the legislative regime of the state or territory in which the business is located (please contact us for information regarding the disposal of uncollected vehicles). If you would like to charge reasonable storage fees, then a clause can be included in terms and conditions for the provision of goods and services by the business (we recommend advising customers of this clause).

**Need assistance?**

Please contact Industry Legal Group on **1300 369 703** or [aaa@industrylegalgroup.com.au](mailto:aaa@industrylegalgroup.com.au) if you have any questions relating to this fact sheet or to discuss any other issues that arise in your Business.

**Industry Legal Group Pty Ltd**

*This document is intended for information purposes only and should not be regarded as legal advice. Please contact Industry Legal Group on **1300 369 703** or [aaa@industrylegalgroup.com.au](mailto:aaa@industrylegalgroup.com.au) for legal advice before taking any action.*

*Individual liability limited by a scheme approved under Professional Standards Legislation.*

3442-6541-5951, v. 1