

NORTHERN TERRITORY OF AUSTRALIA

AUCTIONEERS ACT 1935

As in force at 1 July 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2016

AUCTIONEERS ACT 1935

An Act to regulate Sales by Auction

1 Short title

This Act may be cited as the *Auctioneers Act 1935*.

2 Repeal

- (1) "*The Auctioneers Act, 1862*" of the State of South Australia (No. 9 of 1862), in its application to the Territory, is repealed.
- (2) Notwithstanding the repeal of the Act referred to in subsection (1) any auctioneer's or clerk's licence granted under that Act and in force at the commencement of this Act shall remain in force for the period for which it was granted, and shall be of the same force and effect as if this Act had been in force when it was granted and it had been granted under this Act.

3 Definitions

In this Act, unless the contrary intention appears:

approved means approved by the Minister.

auctioneer means a person who sells by auction or offers for sale by auction.

auctioneer's licence means an auctioneer's licence granted under this Act.

clerk's licence means a clerk's licence granted under this Act.

licence means a licence granted and in force under this Act and includes both an auctioneer's licence and a clerk's licence.

prescribed fee means a fee prescribed under section 3AB.

sale by auction has a corresponding meaning to ***sell by auction***.

sell by auction means sell any property by outcry, knocking down of hammer, candle, lot, parcel, instrument, machine, or any other

mode of sale whereby the highest or the lowest bidder is the purchaser, or whereby the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser, or whereby there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction.

3A Delegation

- (1) The Minister may, in relation to a particular matter or class of matters, or to a particular place, by writing under his hand, delegate to any person all or any of his powers and functions under this Act (except this power of delegation, the power to refuse to grant a licence or the renewal of a licence, the power to cancel or suspend a licence and the power to make regulations) so that the delegated powers may be exercised by the delegate with respect to the matter or class of matters or to the place, specified in the instrument of delegation.
- (2) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

3AB Minister may prescribe fees

The Minister may, by notice in the *Gazette*, prescribe fees for the purposes of this Act.

4 Auctioneer must hold licence

Subject to this Act, a person shall not:

- (a) carry on business as an auctioneer unless he holds an auctioneer's licence; or
- (b) sell or offer to sell by auction unless he holds:
 - (i) an auctioneer's licence; or
 - (ii) a clerk's licence,

which is in force under this Act.

Maximum penalty: 3.4 penalty units.

5 Application for auctioneer's licence

- (1) A person who is of or over the age of 18 years may, in the approved form, apply to the Minister for an auctioneer's licence.

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- (2) An application for an auctioneer's licence must specify:
 - (i) a licence period of 1 year, 3 years or 5 years; and
 - (ii) the applicant's full name and business address; and
 - (iii) any other matters as approved.
 - (3) The application must be accompanied by the prescribed fee for the licence period specified in the application.
 - (4) If the application is refused, the prescribed fee must be refunded to the applicant.

6 Renewal of auctioneer's licence

- (1) A person who holds an auctioneer's licence, may, at any time within 14 days before the date upon which the licence will expire, apply in the approved form to the Minister for a renewal of that licence.
- (2) An application for the renewal of an auctioneer's licence must specify:
 - (a) a licence period of 1 year, 3 years or 5 years; and
 - (b) any other matters as approved.
- (3) The application must be accompanied by the prescribed fee for the licence period specified in the application.
- (4) If the application is refused, the prescribed fee must be refunded to the applicant.

7 Minister may grant or refuse auctioneer's licence, &c.

- (1) Subject to this section, the Minister may grant or refuse to grant an auctioneer's licence or a renewal of an auctioneer's licence.
- (2) The Minister shall not grant an auctioneer's licence or a renewal of an auctioneer's licence unless he is satisfied:
 - (a) that the applicant for the licence or renewal:
 - (i) is of or over the age of 18 years;
 - (ii) is a person of good character; and
 - (iii) is a fit and proper person to hold an auctioneer's licence; and
 - (b) that the prescribed fee has been paid.

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- (3) Where the Minister refuses to grant an auctioneer's licence or a renewal of an auctioneer's licence, he shall serve notice by post, addressed to the applicant at his business address, notifying him that his application has been refused.

8 Appeal to Local Court where Minister refuses or fails to grant auctioneer's licence

- (1) Where the Minister:
- (a) refuses to grant an auctioneer's licence or a renewal of an auctioneer's licence; or
 - (b) for a period of 28 days, from and including the date when the applicant applies for the grant or for the renewal of an auctioneer's licence, fails:
 - (i) to grant the licence or a renewal of the licence; or
 - (ii) to notify the applicant that his application has been refused,

the applicant may appeal to the Local Court.

- (2) An appeal under this section shall be instituted within 28 days from and including:
- (a) the date upon which the applicant receives notice that the Minister has refused to grant him an auctioneer's licence or a renewal of an auctioneer's licence; or
 - (b) the expiration of the period of 28 days during which the Minister has failed:
 - (i) to grant to the applicant an auctioneer's licence or a renewal of his licence; or
 - (ii) to notify the applicant that his application has been refused.

8A Jurisdiction and powers of Local Court on appeal

The Local Court:

- (b) upon hearing the appeal:
 - (i) may affirm the Minister's refusal to grant the licence; or

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- (ii) if it is satisfied that the appellant is a fit and proper person to hold an auctioneer's licence, may deliver to the appellant a certificate to that effect under the seal of the court; and

- (c) may make such order as to costs as it thinks fit.

8B Minister to grant licence on certificate by Local Court

Upon presentation of a certificate sealed by a court pursuant to section 8A and upon payment of the prescribed fee, the Minister shall:

- (a) grant an auctioneer's licence; or
- (b) grant a renewal of an auctioneer's licence,

as the case may be, to the person named and described in that certificate.

8D Period of auctioneer's licence

An auctioneer's licence, unless sooner cancelled or suspended, remains in force:

- (a) from the date on which it is granted until the end of the licence period specified in the application for the licence; or
- (b) if the licence is renewed – from the date of renewal until the end of the licence period specified in the application for renewal.

8E Application for clerk's licence

A person who holds an auctioneer's licence may, in the approved form, apply to the Minister for the grant of a clerk's licence to a person employed by the holder of the auctioneer's licence.

8F Minister may grant or refuse clerk's licence

- (1) Subject to this section, the Minister may grant or refuse to grant a clerk's licence to a person employed by the holder of an auctioneer's licence.
- (2) The Minister shall not grant a clerk's licence unless he is satisfied:
 - (a) that the person in respect of whom the application is made:
 - (i) is of or over the age of 18 years;
 - (ii) is a person of good character;

-
- (iii) is a fit and proper person to conduct sales by auction;
and
 - (iv) is employed by the holder of an auctioneer's licence; and
- (b) that the prescribed fee has been paid.

8H Period of clerk's licence

A clerk's licence, unless sooner cancelled or suspended, shall be and continue in force:

- (a) until 30 June next ensuing after the day upon which the licence is granted or, where the certificate is granted during the month of June in any year, until 30 June in the following year; or
- (b) until the auctioneer's licence of the person, by whom the holder of the clerk's licence is employed, is cancelled or suspended,

whichever first occurs.

8HA Notification of change of circumstance

- (1) A person who holds a licence must, within 14 days after a change in a circumstance relevant to the person's licensing, notify the Minister of the change.

Maximum penalty: 0.8 penalty units.

- (2) For subsection (1), a circumstance is relevant to the person's licensing if:
- (a) it is a change in the person's name, address or place of business; or
 - (b) the person is adjudicated to be a bankrupt.

8J Minister may cancel or suspend licences

The Minister may cancel or suspend, for such period as he thinks fit, the licence of a person who:

- (a) has been found guilty of an offence against this Act;
- (b) in his opinion, is a person of bad character; or
- (c) in his opinion, is not a fit and proper person to conduct sales by auction.

8K Refund of portion of fee for auctioneer's licence in certain circumstances

Where a person who holds an auctioneer's licence ceases to carry on business as an auctioneer or dies, or where his auctioneer's licence has been cancelled, the Minister may, on application by the person to whom the auctioneer's licence was granted or his personal representative and upon delivery of the licence, refund to that person or his personal representative an amount calculated at the rate of one-quarter of the fee for the auctioneer's licence for each complete period of 3 months of the balance of the term of the licence which was unexpired at the time when the person, to whom the licence was granted, ceased to carry on business or died.

9 Non-eligibility of bankrupts

A person adjudicated a bankrupt shall not, unless the adjudication is annulled, be entitled to receive a licence or renewal of a licence unless and until an order of discharge is issued.

10 Exemption of government officers, &c.

A person:

(a) employed to sell by auction any of the lands of the Crown, or any estate or interest therein, or any goods, chattels or other property of the Crown; or

(b) expressly authorized by any law to make any sale by auction,

shall, so far as the sales which he may, as mentioned in this section, be employed or authorized to make, be exempted from the operation of this Act.

12 Return of expired or cancelled or suspended licence

The holder of a licence shall, within 3 days after the expiration of his licence, or, if his licence is cancelled or suspended, within 3 days after the date of the cancellation or suspension of his licence, deliver the licence to the Minister.

Maximum penalty: \$40

13 Misrepresentation as to quality, &c., of property

Any auctioneer who knowingly misrepresents or causes or permits to be misrepresented the composition, structure, character or quality or the origin or manufacture of any property offered by him for sale by auction shall be guilty of an offence.

Maximum penalty: 0.8 penalty unit.

14 Record to be kept

- (1) Every auctioneer shall forthwith record, in a book to be kept for the purpose, full particulars of all property sold by him at auction, and, in respect of any property so sold, shall preserve the record for at least 12 months after the date of the sale.
- (2) The book shall be open to inspection at all reasonable times by the Commissioner of Police or any member of the police force thereto authorized in writing by the Commissioner of Police, and every auctioneer, upon being required so to do, shall produce, for inspection by the Commissioner of Police or other member of the police force, the book kept by him.
- (3) Any person who contravenes any provision of this section shall be guilty of an offence.

Maximum penalty: 0.8 penalty unit.

15 Bidding by seller

Where a sale by auction is not notified in the conditions of sale to be subject to a right to bid on behalf of the seller, the seller shall not himself bid or employ any person to bid at the sale and the auctioneer shall not knowingly take any bid from the seller or any such person.

Maximum penalty: 0.8 penalty unit.

16 Times for auctions

An auctioneer shall not sell or offer for sale by auction any property:

- (a) on Good Friday or Christmas Day; or
- (b) on any other day between the hours of 11 o'clock after noon and 8 o'clock before noon.

Maximum penalty: 0.8 penalty unit.

17 Persons to whom Act does not apply

Notwithstanding anything contained in this Act:

- (a) any officer of any court having jurisdiction in the Territory may, without holding a licence, sell by auction any property taken by him in execution by virtue of any process issued from the court;
- (b) any person thereto authorized by the Minister may, without holding a licence, sell by auction any leases of lands belonging to the Commonwealth or any property belonging to the Commonwealth or to intestate estates; and
- (c) any person who is authorized by any law for the time being in force to sell by auction without a licence may do so.

17A Regulatory offences

An offence of contravening or failing to comply with section 12 or 14(1) is a regulatory offence.

18 Power of courts to cancel or suspend licences

Where any court imposes any penalty for any offence against this Act it may, where the person found guilty holds a licence, at the same time cancel or suspend for such period as it thinks fit the licence of the person found guilty.

18A Licence not transferable

A licence is not transferable by the holder of the licence.

19 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES
1 KEY

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = Gazette | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2 LIST OF LEGISLATION***Auctioneers Ordinance 1935 (Act No. 20, 1935)***

| | |
|-------------|------------------|
| Assent date | 14 November 1935 |
| Commenced | 14 November 1935 |

Auctioneers Ordinance 1955 (Act No. 10, 1955)

| | |
|-------------|--|
| Assent date | 8 June 1955 |
| Commenced | 1 January 1957 (<i>Gaz</i> No. 44, 7 November 1956) |

Auctioneers Ordinance 1960 (Act No. 10, 1961)

| | |
|-------------|-----------------|
| Assent date | 3 February 1961 |
| Commenced | 3 February 1961 |

Auctioneers Ordinance 1964 (Act No. 28, 1964)

| | |
|-------------|---------------|
| Assent date | 5 August 1964 |
| Commenced | 5 August 1964 |

Auctioneers, Dealers and Agents Ordinance 1970 (Act No. 65, 1970)

| | |
|-------------|--|
| Assent date | 10 December 1970 |
| Commenced | (rep <i>Statute Law Revision Act 1980</i> (Act No. 6, 1981)) |

Auctioneers, Dealers and Agents Ordinance 1973 (Act No. 61, 1973)

| | |
|-------------|--|
| Assent date | 11 December 1973 |
| Commenced | (rep <i>Statute Law Revision Act 1980</i> (Act No. 6, 1981)) |

Ordinances Revision Ordinance 1973 (Act No. 87, 1973)

| | |
|-------------|----------------------------|
| Assent date | 11 December 1973 |
| Commenced | 11 December 1973 (s 12(2)) |

Amending Legislation***Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

| | |
|-------------|---------------------------|
| Assent date | 26 Aug 1974 |
| Commenced | 11 December 1973 (s 3(2)) |

Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)

Assent date 24 Aug 1974
Commenced 11 December 1973 (s 3)

Ordinances Revision Ordinance 1976 (Act No. 27, 1976)

Assent date 28 June 1976
Commenced ss 1, 2 and 6: 28 June 1976 (s 6(2));
ss 3 and 4: 11 December 1973; s 5: 24 Oct 1974

Auctioneers, Dealers and Travel Agents Ordinance 1974 (Act No. 23, 1974)

Assent date 19 August 1974
Commenced (rep *Statute Law Revision Act 1980* (Act No. 6, 1981))

Age of Majority Ordinance 1974 (Act No. 37, 1974)

Assent date 23 September 1974
Commenced 1 November 1974 (Gaz No. 42, 17 October 1974, p 475)

Auctioneers, Dealers and Agents Ordinance 1974 (Act No. 75, 1974)

Assent date 24 October 1974
Commenced (rep *Statute Law Revision Act 1980* (Act No. 6, 1981))

Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)

Assent date 9 December 1977
Commenced 1 January 1978 (s 2)

Auctioneers Ordinance 1978 (Act No. 8, 1978)

Assent date 31 March 1978
Commenced 31 March 1978

Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)

Assent date 1 July 1978
Commenced 1 July 1978 (s 8)

Statute Law Revision Act 1978 (Act No. 95, 1978)

Assent date 5 September 1978
Commenced 5 September 1978

Statute Law Revision Act 1981 (Act No. 29, 1981)

Assent date 25 March 1981
Commenced 25 March 1981

Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)

Assent date 28 November 1983
Commenced 1 January 1984 (s 2, s 2 *Criminal Code Act 1983* (Act No. 47, 1983), Gaz G46, 18 November 1983, p 11 and Gaz G8, 26 February 1986, p 5)

Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)

Assent date 5 June 1989
Commenced s 6: 5 June 1989 rem: 1 January 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), Gaz G17, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and Gaz G49, 12 December 1990, p 2)

Statute Law Revision Act 1993 (Act No. 6, 1993)

Assent date 18 March 1993
Commenced 18 March 1993

Statute Law Revision Act (No. 2) 1993 (Act No. 70, 1993)

Assent date 9 November 1993
Commenced 9 November 1993

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Personal Property Securities (National Uniform Legislation) Implementation Act 2010 (Act No. 30, 2010)

Assent date 9 September 2009
Commenced ss 58 to 60: 30 January 2012 (Gaz, S2, 24 January 2012); rem: 25 November 2011 (Gaz, S68, 25 November 2011)

Penalties Amendment (Justice and Treasury Legislation) Act 2010 (Act No. 38, 2010)

Assent date 18 November 2010
Commenced 1 February 2011 (Gaz S6, 1 February 2011)

Red Tape Reduction (Miscellaneous Amendments) Act 2016 (Act No. 12, 2016)

Assent date 10 May 2016
Commenced 1 July 2016 (Gaz G26, 29 June 2016, p 2)

3 SAVINGS AND TRANSITIONAL PROVISIONS

ss 7 and 8 *Auctioneers Ordinance 1955* (Act No. 10, 1955)

4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (Act No. 87, 1973) (as amended) to: ss 2, 4, 6, 8, 8A – 8D, 8G, 8H, 8K, 12 – 16.

5 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: s 1.

6 LIST OF AMENDMENTS

It amd No. 29, 1981, s 2
ss 1 – 2 amd No. 29, 1981, s 2
s 3 amd No. 10, 1955, s 3; No. 29, 1981, s 2; No. 6, 1993, s 2; No. 12, 2016, s 10
s 3A ins No. 10, 1955, s 4
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 29, 1981, s 2
s 3AB ins No. 6, 1993, s 2
s 4 sub No. 10, 1955, s 5
amd No. 29, 1981, s 2; No. 38, 2010, s 3
s 5 sub No. 10, 1955, s 5
amd No. 37, 1974, s 10; No. 51, 1977, s 3; No. 54, 1978, s 3; No. 6, 1993, s 8; No. 70, 1993, s 8; No. 12, 2016, s 11
s 6 sub No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 6, 1993, s 8; No. 12, 2016, s 12

ENDNOTES

- s 7 sub No. 10, 1955, s 5
amd No. 37, 1974, s 10; No. 51, 1977, s 3; No. 54, 1978, s 3
- s 8 sub No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 14, 1989, s 7
- s 8A ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 14, 1989, s 7
- s 8B ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3
- s 8C ins No. 10, 1955, s 5
amd No. 29, 1981, s 2
rep No. 6, 1993, s 8
- s 8D ins No. 10, 1955, s 5
sub No. 12, 2016, s 13
- s 8E ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 6, 1993, s 8
- s 8F ins No. 10, 1955, s 5
amd No. 37, 1974, s 10; No. 51, 1977, s 3; No. 54, 1978, s 3
- s 8G ins No. 10, 1955, s 5
amd No. 29, 1981, s 2
rep No. 6, 1993, s 8
- s 8H ins No. 10, 1955, s 5
- s 8HA ins No. 12, 2016, s 14
- s 8J ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 29, 1981, s 2; No. 17, 1996, s 6
- s 8K ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3
- s 10 amd No. 29, 1981, s 2
- s 11 rep No. 10, 1955, s 6
- s 12 amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 29, 1981, s 2; No. 38, 2010, s 3
- s 13 amd No. 29, 1981, s 2; No. 38, 2010, s 3
- s 14 amd No. 10, 1961, s 2; No. 28, 1964, s 2; No. 29, 1981, s 2; No. 38, 2010, s 3
- s 15 amd No. 29, 1981, s 2; No. 38, 2010, s 3
- s 16 amd No. 10, 1961, s 3; No. 8, 1978, s 2; No. 29, 1981, s 2; No. 38, 2010, s 3
- s 17 amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 29, 1981, s 2
- s 17A ins No. 68, 1983, s 104
- s 18 amd No. 29, 1981, s 2; No. 17, 1996, s 6
- s 18A ins No. 30, 2010, s 27
- s 19 amd No. 87, 1973, s 6; No. 95, 1978, s 14; No. 29, 1981, s 2