

NORTHERN TERRITORY OF AUSTRALIA

AUCTIONEERS ACT 1935

As in force at 11 December 2019

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 11 December 2019

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

"*The Auctioneers Act, 1862*" of the State of South Australia (No. 9 of 1862), in its application to the Territory, is repealed.

3 Definitions

In this Act, unless the contrary intention appears:

approved means approved by the Board.

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.

Board means the Agents Licensing Board established under section 6(1) of the *Agents Licensing Act 1979*.

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.

Registrar means the Registrar of Land, Business and Conveyancing Agents appointed under section 8(1) of the *Agents Licensing Act 1979*.

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 delegate any of the Minister's powers and functions under this Act to the Chief Executive Officer of the Agency or a public sector employee.
- (2) The Board may delegate any of the Board's powers and functions under this Act to the Chief Executive Officer of the Agency or a public sector employee.

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: 100 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 Board for an auctioneer's licence.
- (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.

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- (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 Board 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.

7 Board may grant or refuse auctioneer's licence, etc.

- (1) Subject to this section, the Board must grant or refuse to grant an auctioneer's licence or a renewal of an auctioneer's licence within 28 days of receiving an application.
- (2) The Board must not grant an auctioneer's licence or a renewal of an auctioneer's licence unless the Board is satisfied:
 - (a) that the applicant for the licence or renewal:
 - (i) is of or over the age of 18 years; and
 - (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.
- (3) If the Board refuses to grant an auctioneer's licence or a renewal of an auctioneer's licence, the Board must give written notice of the refusal to the applicant.

8 Review by NTCAT

- (1) NTCAT has jurisdiction to review any of the following decisions (a **reviewable decision**):
 - (a) a decision to refuse to grant an auctioneer's licence;
 - (b) a decision to refuse to renew an auctioneer's licence.

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- (2) An **affected person**, for a reviewable decision, is the applicant for the grant or renewal of a licence.

Note for section 8

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.

8A Board to grant licence on order of NTCAT

If NTCAT orders that a licence be granted or renewed following the review of a reviewable decision under section 8, the Board must promptly issue the licence to the applicant.

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 Board for the grant of a clerk's licence to a person employed by the holder of the auctioneer's licence.

8F Board may grant or refuse clerk's licence

- (1) Subject to this section, the Board may grant or refuse to grant a clerk's licence to a person employed by the holder of an auctioneer's licence.
- (2) The Board must 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; and
 - (ii) is a person of good character; and
 - (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

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- (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 Registrar of the change.

Maximum penalty: 5 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.

8HB Applications for disciplinary action or decisions to take disciplinary action

- (1) The following are grounds for taking disciplinary action against a holder of a licence under this Act:
 - (a) breach of the Act;
 - (b) breach of the rules.
- (2) The Commissioner of Police may, by written notice lodged with the Registrar, apply for disciplinary action to be taken against the licence holder on one or more of the grounds referred to in subsection (1).

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- (3) The Registrar may, by written notice, apply for disciplinary action to be taken against the licence holder on one or more of the grounds referred to in subsection (1).
 - (4) Any other person may, by written notice lodged with the Registrar, apply for disciplinary action to be taken against the licence holder on one or more of the grounds referred to in subsection (1).
 - (5) When the Registrar receives an application under subsection (2) or (4) or makes an application under subsection (3), the Registrar must report to the Board as soon as practical.
 - (6) The Board must hold an inquiry into the conduct of a licence holder if:
 - (a) an application is made under subsection (2), (3) or (4); or
 - (b) the Board independently considers there may be grounds for disciplinary action to be taken against the licence holder.
 - (7) The Board may, without holding an inquiry, reject an application for disciplinary action to be taken against a licence holder if:
 - (a) the application is made by a person mentioned in subsection (4) and, in the opinion of the Board, is of a frivolous, irrelevant or malicious nature; or
 - (b) the application was made on the grounds mentioned in subsection (1)(b) and the Board is satisfied that the licence holder has a reasonable excuse for breaching the rules; or
 - (c) the Board is satisfied that there are no grounds for holding, or there is insufficient evidence to hold, an inquiry.
 - (8) If an application is made for disciplinary action under this section or the Board considers disciplinary action should be taken under this section, the Registrar must, as soon as is reasonably practicable, serve a copy of the application or decision of the Board on the licence holder in respect of whom the application or decision was made.

8HC Board may suspend licence pending inquiry

- (1) If the Board holds an inquiry into a licence holder under section 8HB(6), the Board may, if the Board considers it appropriate, suspend the licence holder's licence until the conclusion of that inquiry.

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- (2) If the Board suspends a licence under subsection (1), the Registrar must give written notice of the suspension to the licence holder.
 - (3) A suspension under subsection (1) takes effect on the day immediately after the date on which the notice is given to the licence holder under subsection (2).

8J Disciplinary action

After holding an inquiry under section 8HB(6), the Board may, if satisfied that the licence holder has breached the Act or the rules, do one or more of the following:

- (a) reprimand or caution the licence holder;
- (b) by written notice, cancel or suspend, for an appropriate period, the licence holder's licence;
- (c) by written notice, impose a fine not exceeding 50 penalty units on the licence holder.

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 Board 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

- (1) A person is not entitled to receive a licence or renewal of a licence if the person:
 - (a) is an undischarged bankrupt or is a director or other person concerned in the management of a company that is the subject of a winding up order or for which a controller or administrator has been appointed; or
 - (b) at any time in the 3 years immediately before the person applied for the licence:
 - (i) was an undischarged bankrupt; or

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- (ii) applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounded with the person's creditors or made an assignment of the person's remuneration for their benefit.
- (2) Subsection (1)(b) applies unless the Board is satisfied that the person took all reasonable steps to avoid bankruptcy.

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 Registrar.

Maximum penalty: 1 penalty unit.

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: 5 penalty units.

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: 5 penalty units.

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

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may prescribe fees for this Act.
- (3) The regulations may make rules of conduct, which may incorporate or adopt by reference (with any necessary changes) rules, provisions, a code or another document, as in force from time to time, relating to professional conduct of auctioneers.

20 Transitional matter for *Statute Law Revision and Repeals Act 2019*

Despite the repeal of section 3AB by the *Statute Law Revision and Repeals Act 2019*, any fees prescribed under section 3AB of the Act as in force immediately before the commencement of that Act continue in force until fees are prescribed in the regulations.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 It = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

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 (*Gaz* 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 *Statute Law Revision Act 1980* (Act No. 6, 1981))

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

Assent date 11 December 1973
 Commenced (rep *Statute Law Revision Act 1980* (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)

Statute Law Revision and Repeals Act 2019 (Act No. 33, 2019)

Assent date 6 November 2019
Commenced pts 2 and 3: 11 December 2019 (Gaz G50, 11 December 2019, p 2); rem: 6 November 2019 (s 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
s 1 amd No. 29, 1981, s 2
s 2 amd No. 29, 1981, s 2; No. 33, 2019, , s 25
s 3 amd No. 10, 1955, s 3; No. 29, 1981, s 2; No. 6, 1993, s 2; No. 12, 2016, s 10; No. 33, 2019, s 26

ENDNOTES

- s 3A ins No. 10, 1955, s 4
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 29, 1981, s 2
sub No. 33, 2019, s 27
- s 3AB ins No. 6, 1993, s 2
rep No. 33, 2019, s 27
- s 4 sub No. 10, 1955, s 5
amd No. 29, 1981, s 2; No. 38, 2010, s 3; No. 33, 2019, s 28
- 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; No. 33, 2019, s 29
- 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; No. 33, 2019, s 30
- s 7 sub No. 10, 1955, s 5
amd No. 37, 1974, s 10; No. 51, 1977, s 3; No. 54, 1978, s 3; No. 33, 2019,
s 31
- s 8 sub No. 10, 1955, s 5
amd No. 51, 1977, s 3, No. 54, 1978, s 3; No. 14, 1989, s 7
sub No. 33, 2019, s 32
- s 8A ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 14, 1989, s 7
sub No. 33, 2019, s 32
- s 8B ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3
rep No. 33, 2019, s 32
- 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; No. 33, 2019, s 33
- s 8F ins No. 10, 1955, s 5
amd No. 37, 1974, s 10; No. 51, 1977, s 3; No. 54, 1978, s 3; No. 33, 2019,
s 34
- 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
amd No. 33, 2019, s 35
- ss 8HB – 8HC ins No. 33, 2019, s 36
- 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
sub No. 33, 2019, s 36
- s 8K ins No. 10, 1955, s 5
amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 33, 2019, s 37
- s 9 sub No. 33, 2019, s 38
- 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; No. 33, 2019, s 39
- 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; No. 33, 2019, s 40
- s 15 amd No. 29, 1981, s 2; No. 38, 2010, s 3; No. 33, 2019, s 41
- s 16 amd No. 10, 1961, s 3; No. 8, 1978, s 2; No. 29, 1981, s 2; No. 38, 2010, s 3
rep No. 33, 2019, s 42

ENDNOTES

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 sub No. 33, 2019, s 43
s 20	ins No. 33, 2019, s 43