Western Australia

Auction Sales Act 1973

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Defined terms

Western Australia

Auction Sales Act 1973

An Act to amend and consolidate the law relating to auctioneers and sales by auction, to repeal the *Auctioneers Act 1921*, and the *Sales by Auction Act 1937*[1], to prohibit certain practices in relation to sales purporting to be sales by way of auction, and for incidental and other purposes.

1. Short title

This Act may be cited as the *Auction Sales Act 1973*.

2. Commencement

This Act or any provisions of the Act shall come into operation on a date or dates to be fixed by proclamation.

*[**3.** Omitted under the Reprints Act 1984 s. 7(4)(f).]*

4. Terms used in this Act

In this Act, unless the context otherwise requires, —

auction, ***sale by auction***, ***sell by way of auction*** and expressions of a similar character mean the selling of any property of any kind or description whatsoever by outcry, by what is known as dutch auction by knocking down of hammer, lot, parcel, or by any other mode whereby the highest, the lowest, or any 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;

auctioneer means any person who sells or attempts to sell or offer for sale or resale any property whether the property of the auctioneer or of any other person by way of auction;

cattle means bulls, bullocks, cows, heifers, steers, or calves;

corporation means any body corporate, whether formed or incorporated in or outside the State, and includes a company, a foreign company or a registrable Australian body within the meaning of the *Corporations Act 2001* of the Commonwealth;

farm produce means skins, hides, tallow, cereals, grain, potatoes, onions and other vegetables, edible roots and tubers, tobacco, fruit, hay, chaff, dairy produce, live or dead poultry and game, and eggs, but does not include wool;

firm means an unincorporated body of persons (whether consisting of individuals or of corporations or partly of individuals and partly of corporations) registered under the *Business Names Registration Act 2011* (Commonwealth);

horses means mares, fillies, foals, geldings or colts;

livestock includes cattle, sheep, pigs, goats, and horses;

mock auction has the meaning given to that term by section 25;

money includes an instrument for the payment of money in any case where the instrument may be paid into a bank;

money received for or on behalf of any person includes money held for or on behalf of any person, whether originally received for or on his behalf or not;

person includes any firm or corporation;

police district means an area established as a police district pursuant to the *Police Act 1892*;

property includes any right or interest in any property;

sale includes an agreement to sell;

section means section of this Act;

sheep means ewes, wethers, rams or lambs.

[Section 4 amended: No. 10 of 1982 s. 28; No. 10 of 2001 s. 15; No. 6 of 2012 s. 37.]

5. Exemptions

(1) Nothing in this Act applies to —

(a) any sale authorised by the Minister for Lands under the provisions of the *Land Administration Act 1997*;

[(b) deleted]

(c) any sale made under the authority of a rule, order, or judgment of the High Court of Australia, the Supreme Court, the District Court, or of any other court having jurisdiction in the State;

(d) any sale under a process of execution issued out of any court;

(e) any sale conducted by or under the authority of the Public Trustee;

(f) any sale of any animal impounded according to law and sold under the laws relating to impounding;

(g) any bazaar or sale of gifts where the whole of the proceeds are devoted for charitable, educational, or church purposes; or

(h) any person who, under or pursuant to any Act, is for the time being authorised to sell by auction without holding an auctioneer's licence.

(2) The Governor may by Order in Council declare that this Act, or any provision of this Act specified in the Order, shall not apply to any class of business either generally or when conducted in any specified circumstances or part of the State, or to any sale conducted solely for a benevolent or other particular purpose

specified in the Order, and may by subsequent Order in Council from time to time revoke or vary such Order in Council.

[Section 5 amended: No. 73 of 1990 s. 45; No. 57 of 1997 s. 20; No. 31 of 1997 s. 141; No. 59 of 2004 s. 141.]

6. Auctioneers to be licensed

(1) A licence under this Act shall be granted only to a natural person and not to any body of persons or body corporate.

(2) In accordance with the provisions of section 8, a licence may be granted to be used for the benefit of a firm or corporation.

(3) The holder of a licence, and any firm or corporation specified in a licence as that for the benefit of which it is to be used, shall carry on the business of an auctioneer —

(a) in the name or trade name specified in that licence and under no other description;

(b) at or from a place of business specified in that licence;

(c) subject to section 22(5), during the period for which that licence remains in force;

(d) in relation to the class or classes of business specified in or authorised by that licence; and

(e) in accordance with any conditions, limitations or restrictions specified in that licence,

and not otherwise.

(4) Subject to this Act no person shall act as an auctioneer and no person, firm or corporation shall carry on or advertise, notify or state that he or it acts as or carries on the business of, an auctioneer, or that he or it is willing so to act or carry on business, unless —

(a) being a natural person, he is the holder of an auctioneer's licence; or

(b) in the case of a firm or corporation, a natural person who is —

(i) a member of that firm;

(ii) an officer of the corporation; or

(iii) an employee of that firm or corporation,

is the holder of an auctioneer's licence granted to him to be used for the benefit of that firm or corporation.

(5) No person, firm or corporation shall wilfully and falsely represent that he or it as an auctioneer has property for sale by auction.

(6) Any person who or firm or corporation which contravenes any provision of this section commits an offence.

Penalty for this subsection: a fine of $50 000.

[Section 6 amended: No. 60 of 1975 s. 2; No. 25 of 2019 s. 7.]

7. Kinds of licence

(1) The licences that may be granted under this Act are —

(a) a general licence;

(b) a restricted licence;

(c) an occasional licence;

(d) an interim licence; and

(e) a provisional licence.

(2) A general licence authorises the holder to act as, and carry on the business of, an auctioneer throughout the State in relation to all classes of business to which this Act applies.

(3) A restricted licence authorises the holder to act as, and carry on the business of, an auctioneer only —

(a) in the part or parts of the State;

(b) in relation to the class or classes of business; and

(c) at the times,

which may be therein specified.

(4) An occasional licence authorises the holder to act as, and carry on the business of, an auctioneer in relation to the occasion and circumstances therein specified but not otherwise.

(5) An interim licence authorises the holder to sell by auction on behalf of the licensed auctioneer named therein during the period of incapacity to which it relates.

(6) A provisional licence authorises the holder to act as an auctioneer under the direct supervision and instruction of the licensed auctioneer named therein but only within the limits of the licence held by the auctioneer so named.

8. Licences may be issued for the benefit of a firm or corporation

(1) Where it is desired that an auctioneer's licence shall be used for the benefit of a firm or corporation, and not otherwise, the application —

(a) shall state the name and the principal place of business of that firm or corporation;

(b) shall state the name and the principal place of business of the proposed licensee;

(c) may be made either by the firm or corporation on behalf of the proposed licensee or by the proposed licensee personally;

(d) shall be treated as though made by or on behalf of the firm or corporation which —

(i) may be represented at any hearing;

(ii) is liable to pay and may be awarded costs; and

(iii) may be required to satisfy the court that it consents to the application.

(2) On an application made under this section the court shall have regard not only to the question as to whether or not the proposed licensee is a fit and proper person to hold a licence but also to the fitness and repute of the firm or corporation for the benefit

of which the licence is to be used, and may hear and take into consideration any objection or submission made in relation to that firm or corporation or the persons responsible for its management.

(3) Two or more licences may be granted in favour of the same firm or corporation.

(4) A licence granted pursuant to an application made under this section shall specify the firm or corporation for the benefit of which it is to be used and shall not be used otherwise.

(5) A firm or corporation for the benefit of which a licence has been granted under this section shall not by virtue thereof be entitled to act as an auctioneer, but with that exception and within the limits to which the licence extends any business done under the licence may be transacted in the name of the firm or corporation.

(6) Except with the consent of the firm or corporation named in the licence, no licence granted pursuant to this section may be transferred but the licence may be transferred, subject to this Act, to any person to whom the firm or corporation has agreed to transfer it and the consent of the licensee or his legal personal representative shall not be necessary where the licensee was an employee of that firm or corporation at the time the licence was granted.

(7) Where an interim licence or a provisional licence is granted pursuant to an application made under this section the firm or corporation for the benefit of which the licence is to be used shall be liable and responsible for any act or default of the holder of the licence in the same manner and to the same extent as the licensed auctioneer named in the licence is liable under this Act and shall, indemnify that licensed auctioneer.

(8) Where a licensee is an employee of a firm or corporation named in his licence, that firm or corporation and not the licensee shall be primarily responsible for observing the requirements of this Act but both the licensee and the firm or corporation so named may be charged with and convicted of the like offence.

*[**9.** Deleted: No. 44 of 2016 s. 4.]*

10. Classes of businesses

(1) For the purposes of a licence other than a general licence the class or classes of business that may be carried on shall be determined by the magistrate and specified in the licence.

(2) A magistrate may define a class of business in whatever terms he thinks fit, or he may specify a prescribed classification.

(3) Regulations may prescribe that dealing in —

(a) any interest in land;

(b) motor vehicles;

(c) wool;

(d) livestock, or any kind of livestock;

(e) second hand articles; or

(f) any other specified kind of commodity or thing,

shall constitute a separate class of business for the purposes of this Act, and any such regulation may be of general or limited application according to time, place or other circumstance.

11. Applications

(1) An application for the grant or renewal of a licence shall be made in the prescribed manner and form to the registrar of the Magistrates Court at the place nearest to the place specified in the application as that in which the applicant proposes to carry on his business, or nearest to the principal place of business specified by the applicant where the applicant proposes to have more than one place of business.

(2) On the application for the grant of a licence, but not in respect of a renewal, 3 character testimonials shall be lodged with the registrar of the court together with the application.

(3) The registrar shall —

(a) endorse on the application particulars of the day appointed for the hearing of the application, which shall be not less than 35 days after the date of the lodging of the application, and of the hour and place of the hearing;

(b) return a copy of the application so endorsed to the proposed licensee or his authorised representative, and to any firm or corporation for the benefit of which the licence sought is to be used or to its authorised representative; and

(c) forward a copy of the application and any accompanying character testimonials forthwith to the senior police officer stationed within the police district in which the principal place of business of the applicant is situate.

(4) An application made under the provisions of section 8, shall be accompanied by the written consent of the firm or corporation for the benefit of which the licence is to be used.

[(5),(5a) deleted]

(6) Where the Commissioner of Police or a person authorised by him, or any other person, desires to object to the grant of a licence he shall lodge with the registrar and serve on the applicant or his authorised representative, at least 7 days before the date appointed for the hearing, a notice stating the objection and the grounds thereof in sufficient detail to enable the applicant to know what he has to answer.

(7) An application for the transfer of a licence shall be endorsed to show clearly the particulars of the licence to which it relates, but in all other respects shall be dealt with as though it were an application for the grant of a licence save that if the proposed licensee is the holder of a current licence no testimonials as to character shall be required.

(8) An application shall be accompanied by the application fee prescribed in relation thereto.

(9) Where the application relates to the grant of an occasional licence or an interim licence the procedure set out in this section shall be followed save that where the Commissioner of Police or a person authorised by him gives his consent the magistrate may grant the application notwithstanding that the requirements of this section as to time have not been observed, but where those requirements have not been observed no person shall be refused the right to be heard to oppose the application by reason only that no notice of objection was served.

[Section 11 amended: No. 60 of 1975 s. 3; No. 46 of 1978 s. 2; No. 59 of 2004 s. 141; No. 44 of 2016 s. 5.]

*[**12.** Deleted: No. 44 of 2016 s. 6.]*

13. Occasional licences

(1) An application for an occasional licence shall specify the date upon which, and the place or places where, a proposed sale is to be held and the business conducted.

(2) A person shall not be entitled to the grant of more than 5 occasional licences in respect of a place or places within the same police district in any period of 12 consecutive months.

(3) A person shall not be entitled to hold more than one occasional licence, whether in respect of the same police district or not, at any one time.

(4) An occasional licence is not transferable.

(5) On payment of the prescribed fee, and on being satisfied that the proposed licensee is a fit and proper person to hold an occasional licence and that no other circumstances make it undesirable, the magistrate may grant an occasional licence in relation to the occasion and circumstances specified in the application and which shall be stated in the licence, subject to such conditions, limitations or restrictions as he thinks fit.

(6) An occasional licence shall take effect from the day therein specified, but shall not be granted for a period or periods of

more than 7 days in the aggregate or for a place outside the police district.

(7) Where an applicant is the holder of a licence granted to be used for the benefit of a firm or corporation, he shall not be entitled to the grant of an occasional licence which appears to the magistrate likely to relate to the same or a similar class of business unless he satisfies the magistrate that the firm or corporation has consented to the making of the application.

14. Interim licence

(1) Where a licensed auctioneer is, or will be, incapacitated by reason of illness or other sufficient cause an application may be made to the court in which his licence was granted for the suspension of that licence and the grant of an interim licence to the person named in the application authorising the person so named to sell by auction on behalf of that licensed auctioneer and to act as, and carry on the business of, an auctioneer on his behalf within the limits of the licence held by that licensed auctioneer or to such lesser extent as the magistrate may order.

(2) An application for an interim licence may be made —

(a) by the licensed auctioneer;

(b) by the firm or corporation specified in the licence as that for the benefit of which it is to be used; or

(c) if he is able to satisfy the court that he is acting on behalf of and with the consent of all parties named in the licence sought to be suspended, by the person seeking to be granted the interim licence.

(3) On payment of the prescribed fee, and on being satisfied that the proposed interim licensee is a fit and proper person to hold a licence, that the licensed auctioneer is or will during the relevant time be incapacitated, and that no other circumstances make it undesirable the magistrate may grant an interim licence, subject to such conditions, limitations or restrictions as he thinks fit.

(4) Subject to subsection (5) an interim licence remains in force for such period or periods, not exceeding 3 months in the aggregate, as is or are specified in that licence, and may be renewed from time to time.

(5) Where the auctioneer's licence to which it relates is surrendered or cancelled, or is suspended otherwise than pursuant to an application made for the purposes of this section, an interim licence shall be deemed to have expired at the same time.

(6) During the period an interim licence is in force the auctioneer's licence to which it relates shall be suspended, but the licensed auctioneer shall nevertheless be personally liable and responsible for any act or default of the holder of the interim licence in the same manner and to the same extent that he would have been liable had such act been done or such default made by him.

15. Provisional licences

(1) Subject to this Act, —

(a) the holder of a general licence or a restricted licence; or

(b) with the written consent of the holder of that licence, a firm or corporation specified in any such licence as that for the benefit of which it is to be used,

may apply for and obtain a provisional licence with respect to any person employed by him, or by that firm or corporation, who desires to obtain practical instruction in the carrying on of the business of an auctioneer.

(2) On payment of the prescribed fee, and on being satisfied that the proposed trainee is a fit and proper person to hold a licence, the magistrate may grant to the proposed trainee, subject to such conditions, limitations or restrictions as he thinks fit, a licence to act as an auctioneer under the direct supervision and instruction of the licensed auctioneer specified in the application.

(3) A provisional licence —

(a) shall not be granted for a period of more than 2 months and shall take effect from the day therein specified;

(b) shall not be granted with respect to the same person more than 3 times in any calendar year;

(c) shall nominate the licensed auctioneer under whom the trainee is to receive instruction; and

(d) shall not be granted otherwise than within the limits and during the currency of the licence held by the licensed auctioneer therein so nominated.

(4) During the period any provisional licence is in force the licensed auctioneer therein nominated shall be personally liable and responsible for any act or default of the holder of the provisional licence in the same manner and to the same extent that he would have been liable had such act been done or such default made by him.

(5) On an application made by the licensed auctioneer nominated in the provisional licence, the court by which the licence was granted may cancel or suspend a provisional licence for such period and on such conditions as in the circumstances of the case the magistrate thinks fit.

(6) Where the licence of the licensed auctioneer therein nominated is surrendered, cancelled or suspended a provisional licence shall be deemed to have expired at the same time.

16. Hearing of applications

(1) An application for the grant or renewal of a licence under this Act shall be granted on the order of a magistrate, and not otherwise.

(2) Every hearing of an application for —

(a) the grant of a licence; or

(b) the renewal of a licence where a person has given notice of objection,

shall be a judicial proceeding open to the public, and may be at any time adjourned by the magistrate.

(3) Any party may appear and be represented by a solicitor or agent, and the magistrate shall hear the applicant, if the applicant so desires, and any objector who has given the prescribed notice and appears before him.

(4) Unless the magistrate so requires, it shall not be necessary for the proposed licensee to appear in person.

(5) Unless —

(a) notice of objection has been given; or

(b) the magistrate otherwise requires,

an application for the renewal of a licence may be taken in Chambers.

(6) If the magistrate is satisfied that the proposed licensee is a fit and proper person to hold a licence then, subject to section 8(2), he may grant the application, but not otherwise.

(7) A licence may be granted or renewed subject to such conditions, limitations or restrictions as the magistrate thinks fit to impose, and where the application is for the grant or renewal of a general licence the magistrate may instead grant a restricted licence if he so thinks fit.

(8) If any objection to an application appears to the magistrate to be frivolous or vexatious he may order the person so objecting to pay to the applicant the costs of and occasioned by the objection, and if an application is refused, or is granted or renewed subject to any condition, limitation or restriction which would not have been imposed had an objection not been made, the magistrate may order the applicant to pay to an objector the whole or a part of the costs of and incidental to his objection.

(9) The prescribed fee shall be paid in full on the grant of a licence.

[Section 16 amended: No. 59 of 2004 s. 141; No. 44 of 2016 s. 7.]

17. Form of licence

(1) A licence shall be in the form prescribed.

(2) A licence shall specify —

(a) the name of the applicant;

(b) the address of the place where he resides;

(c) the address of the place or places of business in respect of which it is taken out, or where no permanent place of business is established the address at or from which the applicant proposes to carry on his business;

(d) the trade name, if any, under which the business is to be carried on; and

(e) where appropriate, the class or classes of business authorised.

(3) A licence shall specify any condition, limitation or restriction subject to which it was granted.

(4) The holder of a licence may apply to a magistrate in the court by which the licence was granted for an order varying the particulars specified in a licence during the currency of the licence and the magistrate may —

(a) order that the particulars be so varied;

(b) order that the matter be dealt with by way of an application for a new licence; or

(c) refuse to make an order,

as he thinks fit.

[Section 17 amended: No. 59 of 2004 s. 141.]

18. Duplicate licences

Where proof of the loss or destruction of a licence is given to the satisfaction of a magistrate in the court by which the licence was granted, he may order the issue of a duplicate licence on payment of the prescribed fee.

[Section 18 amended: No. 59 of 2004 s. 141.]

19. Duration of general and restricted licences

(1) On granting a general or restricted licence, the magistrate shall fix the period, during which, subject to this Act, the licence is to have effect.

(2A) The period fixed under subsection (1) shall be a period that is —

(a) not less than 12 months; and

(b) not more than the prescribed period.

(2B) A general licence or a restricted licence may be renewed from time to time for the prescribed period.

(2C) A period prescribed for the purposes of subsection (2A)(b) or (2B) cannot be less than 12 months.

(2D) Different periods may be prescribed for the purposes of subsection (2B) in relation to the renewal of licences of different prescribed types or descriptions.

(2) In the event of the death of the holder of a general licence or restricted licence, that licence shall, subject to section 8(6), be deemed to have been granted to his legal personal representative and shall, unless previously transferred to some other person or cancelled or surrendered, remain in force until the end of the period of 3 months beginning with the death and shall then expire, so however that the court may extend or further extend that period if the magistrate is satisfied that the extension is necessary for the purpose of winding up the deceased's estate and that no other circumstances make it undesirable.

(3) Where an application is made for the renewal of a general licence or a restricted licence after, but within 3 months of, the date on which that licence expired, the magistrate if satisfied that no other circumstances make it undesirable, and any amount prescribed by way of penalty for a late application is paid, may renew that licence and in that event the renewal of the licence shall be deemed for all purposes to have taken effect on the day immediately succeeding the date on which the previous licence expired.

[Section 19 amended: No. 44 of 2016 s. 8.]

*[**20.** Deleted: No. 59 of 2004 s. 141.]*

21. Surrender of a licence

(1) Any holder of a licence may surrender that licence by returning it to a registrar of the Magistrates Court, and a licence so surrendered shall not be deemed to be a cancelled licence but shall cease to have effect on the date on which it is received by the registrar.

(2) On the surrender of a licence the registrar of the court shall forthwith notify the senior police officer stationed within the police district in which the principal place of business of the licensee is or was situate.

[Section 21 amended: No. 59 of 2004 s. 141.]

22. Suspension, cancellation and disqualification

(1) Where it is alleged that a licensee —

(a) has been guilty of improper conduct in relation to the carrying on of the business of an auctioneer; or

(b) has been guilty of any offence involving dishonest or fraudulent conduct, or of an offence against this Act,

the Commissioner of Police, or a person authorised by him, may apply to the Magistrates Court for a summons requiring the licensee to appear before the court and show cause why the

licence should not be suspended or cancelled, and why the licensee should not be disqualified either temporarily or permanently from holding or taking the benefit of a licence.

(2) Where —

(a) upon proof of the due service of the summons the court is satisfied that a person, firm or corporation has failed to appear to answer a summons issued under this section; or

(b) the court is satisfied pursuant to a summons issued under this section that the holder of the licence, the firm or corporation named in the licence as that for the benefit of which it is to be used or the persons responsible for its management, is, are or have been during the currency of the licence guilty of conduct which would constitute grounds for a refusal to renew a licence; or

(c) the holder of a licence or a firm or corporation named in a licence is convicted by a court of an offence against this Act,

that court may order that the licence be delivered up to the registrar of the court and suspended or cancelled and that the licensee be disqualified from holding or taking the benefit of a licence either for such period as the court specifies in the order or permanently.

(3) A person who fails to deliver up his licence to the registrar of the court in accordance with the terms of an order made under this section commits an offence against this Act.

Penalty for this subsection: a fine of $25 000.

(4) Where a court makes an order under this section the registrar of the court shall, as soon as practicable after the order is made, send a copy of the order to the Commissioner of Police.

(5) A licence the operation of which is suspended under this section shall for the period of that suspension be deemed not to be in force.

(6) Where a licensee is disqualified from holding or taking the benefit of a licence by an order of the court made under this section he or it shall not, for the period of that disqualification, be eligible to apply for any further or other licence under this Act.

(7) For the purposes of this section the expression ***licensee*** includes any person, firm or corporation who or which is, or was during the period of 12 months immediately preceding, the holder of a licence or named in a licence.

[Section 22 amended: No. 59 of 2004 s. 141; No. 25 of 2019 s. 6.]

23. Advertising

(1) No person not being the holder of a licence under this Act, and no firm or corporation not being a firm or corporation for the benefit of which a licence under this Act is held by a licensed auctioneer, shall —

(a) display or maintain, or suffer to be displayed on or about any premises or vehicle any sign or advertisement calculated to lead to the belief that that person, firm or corporation is authorised to carry on the business of an auctioneer; or

(b) publish or make or cause to be published or made any public advertisement or announcement to the effect that any sale by auction of any property whatsoever, not being a sale which may be made by an unlicensed person, will be made, conducted or carried out by or under the direction or supervision of that person, firm or corporation, or that instructions have been received to make, conduct or carry out any such sale.

Penalty for this subsection: a fine of $25 000.

(2) A person who is the holder of an occasional licence under this Act shall not, for the purposes of this section, be regarded as being the holder of a licence under this Act except in so far as

any sign, advertisement or announcement relates solely to the matters in respect of which that occasional licence was granted.

[Section 23 amended: No. 25 of 2019 s. 6.]

24. Misrepresentation

(1) Any person, firm or corporation who knowingly makes or publishes or causes to be made or published in the course of business as an auctioneer any representation or statement which is false or misleading in any material particular, in relation to any lot put up for sale at an auction sale, whether as to the value, composition, structure, description, character or quality, date, manufacture, or origin of that lot or otherwise, commits an offence.

Penalty for this subsection: a fine of $25 000.

(2) It shall be a defence to a charge for an offence against this section of which the making or publication of a false or misleading representation or statement is an ingredient to prove that the accused believed on reasonable grounds that the representation or statement was not false or misleading.

[Section 24 amended: No. 84 of 2004 s. 82; No. 25 of 2019 s. 6.]

25. Mock auctions

(1) A person shall not promote or conduct or assist in the promotion or conduct of a mock auction.

Penalty for this subsection: a fine of $50 000 or imprisonment for 12 months.

(2) For the purposes of this section and subject to subsection (3) a sale in any way commonly known and understood to be by way of auction or purporting to be by way of auction may be taken to be a mock auction if, but only if, during the course of the sale —

(a) any lot is sold to a person and either —

(i) it is sold to him at a price lower than the amount of his highest bid for that lot; or

(ii) part of the price at which it is sold to him is repaid or credited to him or is stated to be so repaid or credited;

or

(b) the right to bid for any lot is restricted, or is stated to be restricted, to persons who have bought or agreed to buy one or more lots; or

(c) any money or article is given away or offered as a gift or in addition to the lot bought; or

(d) the sale of any lot is obtained by deception, including a deception as to the present intentions of the person using the deception or any other person.

(3) A sale shall not be a mock auction by virtue of subsection (2)(a) if it is proved that the reduction in price or the repayment or credit, as the case may be —

(a) was on account of a defect discovered after the highest bid in question had been made, being a defect of which the person conducting the sale was unaware when that bid was made; or

(b) was on account of damage sustained after that bid was made.

(4) A sale shall not be a mock auction by virtue of subsection (2)(c) by reason of the seller providing without charge any or all of the following services —

(a) food and refreshment for consumption during the course of the auction by persons attending the auction;

(b) transport to and from the auction site for persons wishing to attend;

(c) transport from the auction site of lots purchased;

(d) catalogues.

(5) For the purposes of this section —

(a) ***stated*** in relation to a sale means stated by or on behalf of the person conducting the sale by an announcement made to the persons for the time being present at the sale;

(b) any bid stated to have been made at a sale by way of mock auction shall be conclusively presumed to have been made and to have been a bid of the amount stated;

(c) any reference in this section to the sale of a lot to a person who has made a bid for it includes a reference to a purported sale of the lot to a person stated to have made a bid for it, whether that person exists or not; and

(d) anything done in or about the place where a sale by way of mock auction is held, if done in connection with the sale, shall be taken to be done during the course of the sale whether it is done at the time when any lot is being sold or offered for sale or before or after that time.

(6) For the purposes of this section any mode of sale at which the persons present, or some of them, are invited to buy by way of a bid stated, or whereby prospective purchasers are enabled to compete for the purchase of lots whether by way of increasing bids or by the offer of lots to be bid for at successively decreasing prices or otherwise, shall be deemed to be a sale purporting to be by way of auction.

[Section 25 amended: No. 25 of 2019 s. 7.]

26. Records to be kept

(1) Where a licensee, or any firm or corporation for the benefit of which a licence is used, in respect of any sale or transaction in the course of business as an auctioneer receives for or on behalf of any person an amount of money he or it shall record the amount, or cause the amount to be recorded, in a record of accounts so as to show particulars of that receipt separately from any record of money received or held on his or that firm's or corporation's account or for or on behalf of any other person.

Penalty for this subsection: a fine of $25 000.

(2) A licensee, and any firm or corporation for the benefit of which a licence is used —

(a) shall cause the record of accounts referred to in subsection (1) to be kept in such a manner as to show full and accurate particulars of each transaction and of all withdrawals or payments made from that account in sufficient detail to enable the accounts to be conveniently and properly audited;

(b) shall correctly balance those accounts at the end of each month; and

(c) shall retain those accounts for a period of 3 years after the date of the transaction recorded.

Penalty for this subsection: a fine of $25 000.

(3) Every entry in a record of accounts kept for the purposes of this section by or for a licensee shall be deemed, unless the contrary is proved, to have been made by or with the authority of the licensee.

[Section 26 amended: No. 25 of 2019 s. 6.]

27. Account to be rendered

(1) The holder of a licence under this Act and any firm or corporation carrying on business as an auctioneer shall render or cause to be rendered to the person on whose behalf any lot was sold a correct account in writing of the sale and of all moneys received on account of the sale and of the application of those moneys —

(a) in any event, within 42 days after the completion of the sale; or

(b) if demanded in writing by the person in whose behalf the lot was sold within 14 days of the demand,

whichever is the earlier.

Penalty for this subsection: a fine of $25 000.

(2) No person shall be entitled to demand —

(a) an itemised account of any transaction which took place more than 6 months before the making of the demand; or

(b) any particulars of any transaction which relate to a sale conducted more than 3 years before the making of the demand; or

(c) an account from both the holder of the licence and the firm or corporation named in that licence if either the holder or that firm or corporation has previously complied with the provisions of subsection (1).

[Section 27 amended: No. 25 of 2019 s. 6.]

28. Inspection of records

(1) All books, accounts, documents, and other records that are required to be kept under this Act by a licensee, shall at all reasonable times be open to inspection by any person duly authorised in writing in that behalf by the Minister either generally or in any particular case.

(2) Upon the production of his written authority a person authorised by the Minister pursuant to subsection (1), may require any licensee or in his absence any employee or agent of the licensee for the time being having the apparent control or charge of the office or place of business of the licensee —

(a) to produce for inspection —

(i) all records of accounts required to be kept by the licensee in accordance with this Act; and

(ii) all books, papers, contracts, agreements, documents or other records relating to any transaction by or with the licensee in connection with his business as an auctioneer, in the possession, custody or control of the licensee;

(b) to furnish all authorities and orders to bankers as may be reasonably required of him; and

(c) to answer any questions or supply any information with respect to any of those accounts, books, papers, contracts, agreements, documents or other records or any entry in any of them.

(3) The manager or other principal officer of a bank with which a licensee has deposited any money whether in his own account or in any other account, shall, upon demand in writing delivered to him personally by the person so authorised, disclose each such account to any person authorised in writing by the Minister to examine the accounts of the licensee, either generally or in relation to any particular account and shall, whether or not the licensee consents, permit the person so authorised to inspect any book, account, document or record in the possession of the manager or principal officer that relates to any of those accounts.

(4) A person authorised to carry out any inspection for the purposes of this section is also thereby authorised, and shall be permitted, to make and take with him notes, copies or extracts of or from any document or other thing so inspected.

(5) A person who —

(a) wilfully delays or obstructs any person so authorised in the exercise of his powers under this section;

(b) on demand refuses or fails to produce any accounts, books, papers, contracts, agreements, documents or other records required for inspection under this section in his possession, custody or control;

(c) on demand refuses or fails to furnish any authorities and orders to bankers as may be reasonably required of him under this section; or

(d) on demand refuses or fails without lawful excuse to answer truthfully any questions relating to any accounts, books, papers, contracts, agreements, documents or other records required for inspection under this section,

is guilty of an offence against this Act.

Penalty for this subsection: a fine of $25 000.

(6) Where the Minister considers that for the protection of the public it is desirable so to do he may, by notice in writing, appoint an auditor, at the expense of the licensee, to arrange for and carry out an audit of the accounts of the licensee in connection with his business as an auctioneer in respect of the period specified in the notice, and the auditor so appointed has in respect of those accounts similar powers to those powers conferred upon the Auditor General by the *Auditor General Act 2006*, in relation to public accounts and shall prepare and deliver to the Minister a report on the audit.

(7) A person is not required under this section to answer any question or give any information that tends to incriminate him.

(8) For the purposes of this section the expression ***licensee*** includes —

(a) a person whose licence has expired or has been cancelled, suspended or surrendered; and

(b) any firm or corporation named in a licence as that for the benefit of which it is to be used.

[(9) deleted]

[Section 28 amended: No. 98 of 1985 s. 3; No. 77 of 2006 s. 17; No. 25 of 2019 s. 4.]

29. Bidding by seller or auctioneer or person on their behalf

(1) A sale by auction may be notified in the conditions of sale to be subject to the right by the seller or by any person on behalf of the seller or of the auctioneer to make a bid or a specified number of bids.

(2) A seller, and any person on behalf of the seller or of the auctioneer who makes, and any auctioneer who knowingly takes from any such person, —

(a) any bid at a sale by auction unless the right so to bid has been notified in the conditions of sale; or

(b) more than the number of bids so specified in the conditions of sale,

commits an offence.

Penalty for this subsection: a fine of $25 000.

[Section 29 amended: No. 25 of 2019 s. 6.]

30. Sales of cattle, sheep, pigs or goats

(1) In this section ***stock*** means cattle, sheep, pigs, or goats.

(2) A licensee, and any firm or corporation named in a licence as that for the benefit of which it is to be used, acting as, or carrying on the business of, an auctioneer of stock shall —

(a) keep or cause to be kept a register in the prescribed form;

(b) enter or cause to be entered in such register, verified under the hand or initials of the licensee, accurate particulars of all stock sold by the licensee, on the same day as the sale was conducted and in the prescribed manner; and

(c) retain such register for a period of 3 years and all invoices, account sales and other records of the sales conducted for a period of 12 months after the date of the transaction recorded and hold them available for the purposes of section 28.

Penalty for this subsection: a fine of $10 000.

(3) The provisions of section 28 apply, subject to this section, to any records relating to a sale of stock by auction, and any member of the police force of the State or inspector appointed under the *Biosecurity and Agriculture Management Act 2007*, shall be deemed to be a person duly authorised in writing for the purposes of subsection (1) of that section relation to the records of any sale of stock by auction.

(4) An inspector appointed under the *Biosecurity and Agriculture Management Act 2007*, shall not exercise, or be entitled to

exercise, the powers conferred on him by subsection (3) after the expiration of the day on which the sale is conducted.

(5) No —

(a) licensee;

(b) employee of a licensee or of any firm or corporation named in the licence of the licensee as that for the benefit of which the licence is to be used; or

(c) person who acts as a clerk of an auctioneer whether or not actually employed in that capacity,

shall, whether directly or indirectly, make a purchase on his own behalf of any stock placed in the licensee's hands for sale by auction, unless the vendor has previously consented in writing to that purchase.

Penalty for this subsection: a fine of $50 000 or imprisonment for 12 months, or both.

(6) Where any person is convicted of an offence against subsection (5) the court before which the conviction is obtained may, in addition to any other penalty, order the person convicted to account for and pay over to the vendor all profits resulting from the purchase.

[Section 30 amended: No. 24 of 2007 s. 77(2) and (3); No. 25 of 2019 s. 7.]

31. Splitting of lots of livestock or farm produce

(1) A person who induces or attempts to induce any other person to abstain from bidding at a sale by auction of livestock or farm produce, either generally or for any particular lot, by means of a promise, express or implied, that he will if he is the successful bidder —

(a) give that other person the right to elect to take over as purchaser through the auctioneer all or any of that livestock or farm produce at the auction price; or

(b) agree to decide by tossing or the drawing of lots or other method who is to become the owner of all or any of that livestock or farm produce,

commits an offence.

Penalty for this subsection: a fine of $25 000.

(2) A person who abstains or agrees to abstain from bidding at a sale by auction of livestock or farm produce as the result of a promise, express or implied, of the kind referred to in subsection (1), commits an offence.

Penalty for this subsection: a fine of $25 000.

(3) Any person who knowingly enters or knowingly permits or causes to be entered in any record kept by an auctioneer any name, other than the name of the actual successful bidder, as the name of the purchaser of any livestock or farm produce commits an offence.

Penalty for this subsection: a fine of $25 000.

(4) If any person enters in any record kept by an auctioneer in relation to any sale of livestock or farm produce a name, other than the name of the actual successful bidder, as the name of the purchaser of that livestock or farm produce the auctioneer shall, unless he proves to the satisfaction of the court that he did not know that the name was so entered, be guilty of an offence.

Penalty for this subsection: a fine of $25 000.

(5) Where the actual successful bidder at a sale by auction of any livestock or farm produce, as soon as practicable after the auctioneer conducting the sale has indicated the actual successful bidder but not in any case later than the day of the sale, informs the auctioneer —

(a) that he bid for the livestock or farm produce on behalf of another person; and

(b) of the name of that other person,

the provisions of subsection (3) and subsection (4) shall not apply if the entry made is made in the name of that other person.

(6) In relation to any sale to which this section applies, a successful bidder who supplies any wrong information to the auctioneer, or to any person, firm or corporation on whose behalf the sale is conducted, as to the name of the purchaser commits an offence.

Penalty for this subsection: a fine of $25 000.

(7) At a sale by auction of livestock or farm produce the auctioneer shall either —

(a) read or recite aloud a statement of the material parts of this section before the commencement of the bidding (save that where on any day successive sales by auction of livestock or farm produce are held at the same selling place and the provisions of this paragraph are complied with by the auctioneer conducting the first sale no auctioneer thereafter conducting any of such successive sales shall be required before commencing that sale to comply with those provisions); or

(b) where the conditions of sale are not read or recited aloud before the commencement of the bidding but are exhibited by means of notices in the yard of place where the sale is held, exhibit before and keep exhibited and prominently displayed during the sale a statement of the material parts of this section incorporated in each such notice of the conditions of sale in larger print or lettering than the conditions of sale,

and any auctioneer who fails to comply with the provisions of this subsection commits an offence.

Penalty for this subsection: a fine of $25 000.

[Section 31 amended: No. 25 of 2019 s. 6.]

32. Sale of livestock

(1) Subject to subsection (2), where an auctioneer receives any livestock for sale he shall require from the person who is the

drover or carrier of that livestock at the time they are so received the original of the waybill issued under regulations made under the *Biosecurity and Agriculture Management Act 2007*.

(2) An auctioneer who complies with subsection (1) in respect of any livestock sold by him at auction, and who, in any proceedings against him in any court satisfies the court that he acted in good faith and under reasonable belief that the person on whose behalf and by whose authority he sold the livestock was the true owner thereof, shall not be in any way liable to the owner of the livestock by reason only that the auctioneer took possession of or gave delivery of them.

[Section 32 amended: No. 46 of 1994 s. 40; No. 24 of 2007 s. 77(4).]

33. Liquor

(1) Nothing in this Act shall be construed as interfering with or derogating from the right of any person who is the holder of a licence under the *Liquor Control Act 1988*, from selling liquor pursuant to that licence.

(2) Notwithstanding the provisions of the *Liquor Control Act 1988*, a licensed auctioneer who is also the holder of a licence granted under that Act may sell liquor by auction in accordance with his licence under that Act on premises other than those in respect of which he is licensed under that Act.

(3) Where on any premises a sale of the goods and effects of the occupier or late occupier of those premises is to be held a licensed auctioneer may sell by auction any liquor which was comprised in the private stock of such occupier or late occupier and which had been kept by him for home consumption if that auctioneer —

(a) holds a licence under the *Liquor Control Act 1988*, authorising him so to do; or

(b) he has the written licence of a magistrate so to do.

(4) Notwithstanding the provisions of the *Liquor Control Act 1988*, a magistrate may grant a licence for the purposes of subsection (3), without payment, and any licence so granted has effect only on the day and in relation to the premises therein specified.

[Section 33 amended: No. 59 of 2004 s. 141; No. 73 of 2006 s. 115.]

34. Savings of other remedies or actions

Nothing in this Act shall derogate from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than under this Act.

35. Offences

[(1), (2) deleted]

(3) A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.

[(4) deleted]

(5) Where by reason of or arising out of any act or omission of the holder of a licence granted for the benefit of a firm or corporation that firm or corporation is charged with an offence under this Act, is required to show cause for the purposes of section 22(1), or is required to satisfy the court as to its fitness or repute upon any application for the grant or renewal of a licence it shall be an answer in any such case for the firm or corporation to show that —

(a) the act or omission complained of was committed or occurred without its knowledge and that it could not reasonably be expected to have known that any provision of this Act had been contravened or had not been complied with;

(b) the firm or corporation was not in a position to influence the conduct of the holder of the licence in relation to the act or omission; or

(c) the firm or corporation used all due diligence to prevent the commission or occurrence of such act or omission.

[Section 35 amended: No. 59 of 2004 s. 141; No. 25 of 2019 s. 5; No. 9 of 2023 s. 24.]

36. Enforcement

Any member of the police force may without warrant enter and remain on any premises where he has reasonable grounds to believe that a sale is being conducted by way of auction or mock auction.

37. Regulations

(1) The Governor may make regulations for or with respect to any matter or thing which is required to give effect to the provisions of this Act.

[(2) deleted]

[Section 37 amended: No. 44 of 2016 s. 9; No. 34 of 2020 s. 95(2).]

Notes

This is a compilation of the *Auction Sales Act 1973* and includes amendments made by other written laws [2]. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Auction Sales Act 1973	73 of 1973	6 Dec 1973	Act other than s. 3, 6-23, 26-28, 30, 31 and 33: 14 Dec 1973 (see s. 2 and *Gazette* 14 Dec 1973 p. 4528); s. 3, 6-23, 26-28, 30, 31 and 33: 13 Sep 1974; (see s. 2 and *Gazette* 13 Sep 1974 p. 3421)
Auction Sales Act Amendment Act 1975	60 of 1975	24 Oct 1975	24 Oct 1975
Auction Sales Act Amendment Act 1978	46 of 1978	29 Aug 1978	29 Aug 1978
Reprint of the *Auction Sales Act 1973* approved 6 Mar 1980 (includes amendments listed above)			
Companies (Consequential Amendments) Act 1982 s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and *Gazette* 25 Jun 1982 p. 2079)
Reprint of the *Auction Sales Act 1973* approved 30 Sep 1984 (includes amendments listed above)			
Acts Amendment (Financial Administration and Audit) Act 1985 s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and *Gazette* 30 Jun 1986 p. 2255)
R & I Bank Act 1990 s. 45(1)	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and *Gazette* 28 Dec 1990 p. 6369)
Stock (Brands and Movement) Amendment Act 1994 s. 40	46 of 1994	27 Sep 1994	17 May 1995 (see s. 2 and *Gazette* 16 May 1995 p. 1839)
Acts Amendment (Land Administration) Act 1997 s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)

Short title	Number and year	Assent	Commencement
Statutes (Repeals and Minor Amendments) Act 1997 s. 20	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the *Auction Sales Act 1973* as at 10 Jun 1999 (includes amendments listed above)			
Corporations (Consequential Amendments) Act 2001 Pt. 5	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Liquor and Gaming Legislation Amendment Act 2006 s. 115	73 of 2006	13 Dec 2006	7 May 2007 (see s. 2(2) and *Gazette* 1 May 2007 p. 1893)
Financial Legislation Amendment and Repeal Act 2006 s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Reprint 4: The *Auction Sales Act 1973* as at 18 May 2007 (includes amendments listed above)			
Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007 s. 77	24 of 2007	12 Oct 2007	1 May 2013 (see s. 2(2) and *Gazette* 5 Feb 2013 p. 823)
Business Names (Commonwealth Powers) Act 2012 Pt. 4 Div. 1	6 of 2012	10 Apr 2012	28 May 2012 (see s. 2(c) and Cwlth *Gazette* 19 Apr 2012 ref. F2012L00891)
Licensing Provisions Amendment Act 2016 Pt. 2	44 of 2016	1 Dec 2016	1 Jul 2017 (see s. 2(b) and *Gazette* 27 Jun 2017 p. 3407)
Consumer Protection Legislation Amendment Act 2019 Pt. 2	25 of 2019	24 Oct 2019	1 Jan 2020 (see s. 2(b) and *Gazette* 24 Dec 2019 p. 4415)
COVID-19 Response and Economic Recovery Omnibus Act 2020 s. 95	34 of 2020	11 Sep 2020	12 Sep 2020 (see s. 2(b))

Short title	Number and year	Assent	Commencement
Directors' Liability Reform Act 2023 Pt. 3 Div. 7	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))

Other notes

[1] The provision in this Act repealing these Acts has been omitted under the *Reprints Act 1984* s. 7(4)(f).

[2] The *Business Licensing Amendment Act 1995* Pt. 2 was deleted by the *Statutes (Repeals and Minor Amendments) Act 2025* s. 14 before it purported to come into operation.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
auction	4
auctioneer	4
cattle	4
corporation	4
farm produce	4
firm	4
horses	4
licensee	22(7), 28(8)
livestock	4
mock auction	4
money	4
money received for or on behalf of any person	4
person	4
police district	4
property	4
sale	4
sale by auction	4
section	4
sell by way of auction	4
sheep	4
stated	25(5)
stock	30(1)

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