

AUCTIONEERS.

No. 29 of 1921.

Reprinted pursuant to the Amendments Incorporation Act, 1938, as amended by the Acts No. 53 of 1932* and No. 11 of 1938.†

AN ACT to amend and consolidate the Law relating to Auctioneers.

[Assented to 30th December, 1921.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Auctioneers Act*, 1921-1938.

Short title.
No. 29 of
1921, s. 1;
No. 11 of
1938, s. 6.

2. The Acts mentioned in the Schedule A to this Act are hereby repealed.

Repeal.
Schedule A.
No. 29 of
1921, s. 2.

3. Every person who shall sell or offer for sale any goods or chattels, land, tenements, or hereditaments, or any interest therein, at any sale where any person becomes the purchaser of the same by competition and being the highest bidder, either by being the single bidder or increasing on the biddings made by others or decreasing on sums named by the auctioneer or other person at such sale or by any other mode of sale by competition, shall, (subject to this Act) be deemed to act as an auctioneer within the meaning of this Act.

Interpretation
of term "act
as auctioneer."
No. 29 of
1921, s. 3.

4. (1) Licenses to act as auctioneer shall be of five kinds, namely, general, country, district, temporary, and occasional district licenses.

Licenses.
No. 29 of
1921, s. 4,
amended by
No. 11 of
1938, s. 2.

*Assented to 30th December, 1932; †Assented to 30th November, 1938.

(2) The authority conferred by a general license shall extend to the whole State, that conferred by a country license to the whole State, except the metropolitan area, and that conferred by a district license to the magisterial district named therein, but so that every part of the metropolitan area shall be excluded therefrom. The authority conferred by a temporary license shall be that provided by section fourteen of this Act and the authority conferred by an occasional district license shall be that provided by section fifteen of this Act.

(3) Metropolitan area means that portion of the State which is within the Metropolitan Province, the Metropolitan Suburban Province, and the West Province.

No license to be granted unless magistrate's certificate obtained. No. 29 of 1921, s. 5, amended by No. 53 of 1932, s. 2. Applications for certificates. Schedule B. Schedule C.

5. (1) No general or country license shall be granted except on the certificate (according to the form in Schedule B to this Act) of the resident magistrate of the magisterial district within which the applicant resides, and no district license shall be granted except on the like certificate of the resident magistrate of the district in which the license is to be operative.

(2) Every person who desires to obtain a certificate under this section shall, ten days at least before the day appointed for the hearing of the application, deliver in duplicate to the clerk of the magistrate an application in writing therefor according to the form in Schedule C to this Act, and the clerk shall forthwith send one copy of the application to the chief officer of police stationed within the district wherein the application is to be heard.

(3) Subject as hereinafter provided the applicant shall also, seven days at least before the day appointed for the hearing, publish a copy of such application (with a notice subscribed as shown in Schedule C) in a newspaper circulating in the said district. The day appointed for the hearing shall be such day as shall be inserted in the application with the approval of the clerk. The hour and place of hearing to be inserted in the application shall also be subject to the approval of the clerk.

Inserted by No. 53 of 1932, s. 2 (b).

Provided that, where the applicant is already the holder of a current license under this Act, and is applying for a similar license to take effect as from the expiration of the term of his said current license, the applicant, instead of publishing a copy of his application in a newspaper as aforesaid, shall deliver such copy to the clerk of

the magistrate, who shall post the same on some conspicuous part of the outside of the court house, and keep the same so posted until the application is heard.

(4) Any person desirous of objecting to the granting of the certificate may serve on the applicant, at least three days before the day appointed for the hearing, a notice according to the form in Schedule D to this Act, of his intended objection and setting out the grounds thereof in such manner that the applicant shall know what he has to answer.

Schedule D.

6. (1) Every hearing of an application shall be a judicial proceeding, and may be at any time adjourned by the magistrate. It shall be open to the public, and the magistrate shall hear the applicant and any objector who has given the prescribed notice and shall appear before him. Any party may appear and be represented by a solicitor or agent, but the magistrate may insist on the personal appearance of the applicant.

Hearing of applications.
No. 29 of
1921, s. 6.

(2) If the magistrate shall be satisfied that the applicant is a fit and proper person to hold a license under this Act, he shall grant the application, but otherwise he shall refuse it.

(3) If any objection to such application appears to be frivolous or vexatious, the magistrate may order the objector to pay to the applicant the costs of and occasioned by the objection, and if an application is refused, the magistrate may order the applicant to pay any successful objector the costs of and incidental to his objection.

7. (1) When an application is granted the magistrate shall issue the certificate to the applicant, who shall forthwith cause the same to be presented to the Colonial Treasurer or a collector of revenue, and the said Colonial Treasurer or collector shall issue the license on payment of the fees prescribed by this Act. A certificate shall become void unless the sum required to be paid in accordance with the provisions of section nine of this Act for the license authorised thereby is paid within fourteen days after the granting of the certificate.

Granting of licenses.
No. 29 of
1921, s. 7,
amended by
No. 53 of
1932, s. 3.

(2) The licenses shall be respectively according to the forms 1, 2, and 3 in Schedule E to this Act, and the forms shall be printed by the Government Printer.

Schedule E.

Duration of
licenses.
No. 29 of
1921, s. 8.

8. Every application for a license shall be heard during the currency of the calendar year in which the license is to have effect or in the month of December preceding that year, and every such license which shall be granted shall, subject to this Act, expire on the thirty-first day of December of that year; but licenses granted before the commencement of this Act shall continue to have effect till the expiry of the respective periods for which they were granted.

Fees for
licenses.
No. 29 of
1921, s. 9,
amended by
No. 53 of
1932, s. 4.

9. The fee for a general license shall be twenty-five pounds, for a country license fifteen pounds, and for a district license five pounds: Provided that if the term of any license shall commence on or after the first day of April, the licensee shall pay only three-fourths of the annual fee for such license; if on or after the first day of July, one-half of such fee; and if on or after the first day of October, one-fourth of such fee.

Provided further—

- (i) that, where a license for any year is granted at any time prior to the first day of July in that year, only one moiety of the fee prescribed and payable for such license shall be payable on the issue of such license, and the remaining moiety of such fee shall be payable and paid on or before the first day of July in such year; and
- (ii) if the holder of a license referred to in paragraph (1) of this proviso fails to pay such remaining moiety of the fee prescribed and payable in respect of such license on or before the said first day of July, the license shall be deemed to be cancelled, and shall be null and void as from and after the said date, without, however, relieving the licensee from liability to pay such remaining moiety, which shall be recoverable from him at the suit of the Treasurer as a debt due to the Crown in any court of competent jurisdiction.

Transfer of
licenses.
No. 29 of
1921, s. 10.

10. (1) Any person to whom the holder of a license or the legal personal representative of the licensee has agreed to transfer the license may apply to the resident

magistrate of the district in which the certificate for the license was granted for an order transferring the license to the applicant.

(2) The provisions of sections five and six of this Act shall apply (*mutatis mutandis*) to and in respect of the application and the hearing thereof, and the decision thereon and the incidental costs, as if the application were for a certificate for a license: Provided that before the application is heard the applicant shall pay a fee of one pound, and that the applicant must, in addition to satisfying the magistrate that he is a fit and proper person to hold a license, prove also that the holder of the license or his legal personal representative consents to the application.

(3) For the purposes of this section the forms in Schedules C and D may be used, with such alterations as may be necessary to adapt them to such purposes.

(4) If an application for a transfer is granted, the magistrate shall indorse the license with an order of transfer according to the form in Schedule F to this Act, and such order shall have effect according to its tenor.

Schedule F.

(5) In the case of a general or country license granted before the commencement of this Act, the application must be made to the resident magistrate of the district within which the applicant resides, and in the case of a district license so granted, the application must be made to the resident magistrate of the district for which the license was granted.

11. No person shall act as an auctioneer after sunset or before sunrise on any day except for the purpose of selling freehold or leasehold lands or tenements or shares in any incorporated company, or wool included and described in a catalogue issued prior to and for the purpose of the sale of such wool.

No person to act as an auctioneer after sunset or before sunrise.
No. 29 of 1921, s. 11.

Penalty: Fifty pounds.

Provided that this section shall not apply to sales by auction held, with the approval of the Colonial Treasurer, at a bazaar or sale of gifts for charitable or church purposes.

Unlicensed person not to act or hold himself out as an auctioneer or advertise sales by auction.
No. 29 of 1921, s. 12.

12. No person not being the holder of a license under this Act shall—

- (a) act as an auctioneer; or
- (b) advertise or hold himself out as being an auctioneer or entitled to conduct auction sales; or
- (c) have any words painted or inscribed over, on, or about any premises occupied by him which are calculated to lead to the belief that such person is an auctioneer, or keep, maintain, or suffer to remain any such words over, on, or about any such premises; or
- (d) 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 him or under his direction or supervision, or that he has received instructions to make, conduct, or carry out any such sale.

Penalty: One hundred pounds.

Holder of limited license not to act or advertise sale beyond limits of license.
No. 29 of 1921, s. 13, amended by No. 11 of 1938, s. 3.

13. Subject to section fifteen of this Act no person being the holder of a license other than a general license shall act as an auctioneer beyond the limits within which his license is operative, or 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 him or under his direction or supervision at any place outside such limits, or that he has received instructions to make, conduct, or carry out any such sale.

Penalty: Fifty pounds.

Temporary license to clerk or deputy of licensed auctioneer.
No. 29 of 1921, s. 14.

14. (1) Any police or resident magistrate on the written application of any licensed auctioneer and on payment of the fee hereinafter mentioned, if he is satisfied that such auctioneer is unable from illness or any other sufficient cause to act as auctioneer, may grant to such auctioneer a temporary license to sell by auction by his clerk or deputy in any place; and such clerk or

deputy shall thereupon, at the place and during the period specified in such temporary license, be authorised to act as an auctioneer on behalf of such licensed auctioneer, and for that purpose shall be deemed to be the holder of an appropriate license under this Act.

(2) Such temporary license shall be according to the form in Schedule G to this Act, and the forms shall be printed by the Government Printer. Schedule G.

(3) A fee of one guinea shall be paid for each period of seven days for which such temporary license is granted.

(4) A licensed auctioneer shall not be granted more than twelve temporary licenses in any calendar year. Such auctioneer shall be personally liable and responsible for acts or defaults of any clerk or deputy acting on his behalf by virtue of any such temporary license, in the same manner and to the same extent as such auctioneer would be liable if such act were done or such default were made by such auctioneer.

(5) During the period such temporary license is in force the auctioneer's license granted to such auctioneer shall be suspended.

15. (1) The stipendiary, police or resident magistrate of any magisterial district other than a magisterial district situate within the metropolitan area as defined in subsection (3) of section four of this Act may, on the written application of any person being the holder of a current district license issued in respect of the magisterial district of such magistrate, grant to such person in accordance with this section an occasional district license to conduct as auctioneer a sale by auction at any place situate within a magisterial district other than that in respect of which the district license of the applicant is held but which is immediately contiguous with such last-mentioned magisterial district: Provided that before granting any such occasional district license, the magistrate to whom this application is made—

Occasional district licenses. Inserted by No. 11 of 1938 as s. 14A, now renumbered s. 15.

- (i) shall give to the police the opportunity, if they so desire, of objecting to such application; and
- (ii) shall be satisfied that there are sufficient reasons for granting the license.

(2) The fee payable for an occasional district license shall be one guinea (£1 1s.) and shall accompany the application. If the application is refused the fee shall be refunded to the applicant.

(3) The application shall specify the date upon which, and the place where, the auction sale in relation to which a license under this section is required is to be held and the occasional district license granted pursuant to such application shall be according to the form in Schedule H to this Act and which form shall be printed by the Government Printer.

(4) An occasional district license granted under this section shall authorise the holder thereof to conduct as auctioneer a sale by auction on the date and at the place specified in the license, but not otherwise.

(5) In no event shall any occasional district license be granted in relation to any auction sale to be held at a place situate within the metropolitan area aforesaid.

(6) While the holder of an occasional district license is conducting an auction sale under the authority thereof he shall have all the rights and benefits and be subject to all the obligations and liabilities of a holder of a district license for the magisterial district within which the place named in his occasional district license is situate.

(7) No person shall be entitled to a grant of more than five occasional district licenses under this section in respect of a place or places within the same magisterial district in any one year.

(8) No person shall be entitled to hold more than one occasional district license (whether in respect of the same magisterial district or not) at any one time.

(9) Notwithstanding anything to the contrary contained elsewhere in this section, where an auction sale cannot be concluded in the one day, or where all the property or chattels to be sold by auction at the one sale cannot be conveniently put up for sale at one place, then it shall be lawful for the magistrate to whom the application is made to grant an occasional district license in respect of the one auction sale specified in the application for such license to operate and have effect on any number of specified days exceeding one, but not exceeding

seven, and at more than one place as specified in the application, provided all the places so specified are situate within the same magisterial district.

(10) An occasional district license shall not be transferable.

(11) Where an applicant is the holder of a district license as representative of a firm or company under and in accordance with the provisions of section twenty of this Act, an occasional district license shall not be granted under this section to such applicant except with the consent of such firm or company.

16. Nothing in this Act shall prevent any unlicensed person acting as auctioneer in connection with the sale of any property—

- (a) under a distress for rent; or
- (b) under any process of execution issued out of any court or by any magistrate; or
- (c) under any judgment or order of the Supreme Court or of the High Court of Australia or of any local court or of any prize court; or
- (d) by a person authorised by the Minister for Lands to conduct sales by auction under the provisions of the Land Act, 1898;*
- (e) at a bazaar or sale of gifts where the whole of the proceeds are devoted for charitable, educational, or church purposes;

or in connection with the sale of any ship, boat, vessel, or goods wrecked or stranded on any of the coasts of the State or found derelict at sea and sold by auction for the benefit of the insurers or proprietors thereof or to defray charges of salvage.

17. A licensed auctioneer shall, without further payment or without being licensed under the Licensing Act, 1911, have, in addition to the rights and privileges conferred by this Act, the privilege of selling in any quantity not less than one gallon, on the premises on which a *bonâ fide* sale of the goods and effects of the occupier or late occupier of the said premises shall be held, all liquors which are the private stock of such occupier of the said premises, and which have been kept *bonâ fide* for the home consumption of such occupier: Provided,

Auction sales for which no license required.
No. 29 of 1921, s. 15.

Auctioneers to have the privileges of a gallon license holder.
No. 29 of 1921, s. 16.

Proviso.

nevertheless, that before an auctioneer, not being the holder of a gallon license, can or may exercise the rights and privileges hereby conferred, or any of them, he shall first obtain the written license of a police or resident magistrate for that purpose, which said license the said magistrate may grant or refuse as he may deem advisable; and every such license shall be for one day's sale only, and shall state the premises upon which the auction is to be held; and the rights and privileges hereby conferred shall extend only to the day and premises mentioned in the said license.

Reservation of rights of auctioneer being a license holder.
No. 29 of 1921, s. 17.

18. Nothing in this Act contained shall interfere with or deprive an auctioneer, holding a license under the Licensing Act, 1911, from selling liquors in accordance with the privileges conferred upon him by such license as he may hold.

An auctioneer who holds a gallon, two gallon, or spirit merchant's license may hold sale on any premises.
No. 29 of 1921, s. 18.

19. A licensed auctioneer who is also the holder of a gallon, two-gallon, or spirit merchant's license shall have the right of selling by auction liquor on any premises other than those in respect of which he is so licensed, but in all other respects in accordance with such license, notwithstanding anything contained in the Licensing Act, 1911.

Licenses may be issued for the benefit of firms or companies.
No. 29 of 1921, s. 19.

20. (1) Any person applying for a license under this Act may, in his application, state that he is applying for the benefit of a particular firm of or in which he is an employee or partner or of a particular company of which he is an employee; but the clerk of the magistrate shall not receive such application unless he is satisfied that the firm or company has, by writing signed on its behalf, consented thereto.

(2) The firm or company may be represented at the hearing, and shall be liable to pay and may be awarded costs, as if such firm or company were the applicant.

(3) The magistrate may refuse the application on the ground of want of fitness in the firm or company.

(4) The certificate of the license, if granted, shall state that the license is to be used for the benefit of the firm or company, and the license when issued shall contain the like statement and shall be exercised for the benefit of the firm or company and not otherwise.

(5) Two or more such licenses may be granted in favour of the same firm or company.

(6) Neither the licensee nor his legal personal representative shall be competent, except with the consent of the firm or company, to agree to transfer such license, but a transfer of any such license as aforesaid may be made to any person to whom the firm or company has agreed to transfer the same, and the consent of any such licensee, being the employee of the firm or company, or of his representative, shall not be necessary.

(7) A temporary license shall not be granted in respect of such license as aforesaid except with the consent of the firm or company. The liability imposed by subsection (4) of section fourteen shall in the case of a temporary license granted by virtue hereof, attach to the firm or company and not to the licensed auctioneer.

(8) A firm or company for whose benefit any such license has been issued shall not be entitled, by virtue thereof, to act as auctioneer; but, with this exception, the provisions of section twelve of this Act shall not, within the limits to which the license extends, apply to such firm or company so long as the license remains in force, and any business done under the license may be transacted in the name of the firm or company.

(9) If during the currency of any such license as aforesaid the firm or company desires to transfer the benefit of the license to any firm or company, the transfer may on the application of the proposed transferor and transferee be made by the resident magistrate of the district in which the license was granted, but the provisions of section ten shall (subject to such modifications as may be prescribed) apply to and in respect of such application and the proceedings thereon as if the application were for a transfer of a license. After the transfer, the license shall be held and exercised for the benefit of the transferee as if it had been granted for that purpose.

(10) For the purpose of this section "firm" means a firm consisting of two or more persons registered under the Registration of Firms Act, 1897, and "company" means any incorporated body of persons which but for this Act would be competent in law to transact or engage in auctioneering business.

Auctioneers.

No appeal against grant of license, etc.
Application of Justices Act, 1902-1920.
No. 29 of 1921, s. 20.

21. There shall be no appeal against the decision of any magistrate granting or refusing a certificate for a license or a transfer of a license, but in other respects the Justices Act, 1902-1936, shall apply to proceedings under this Act before a magistrate so far as it is applicable.

Any police magistrate may act as resident magistrate.
No. 29 of 1921, s. 21.

22. Any police magistrate may exercise the powers under this Act of a resident magistrate.

Forfeiture of license.
No. 29 of 1921, s. 22.

23. If any licensed auctioneer shall be convicted before any police or resident magistrate of any offence against this Act, the magistrate may order his license to be forfeited, and thereupon such license shall become void and of no effect.

Regulations.
No. 29 of 1921, s. 23.

24. The Governor may make such regulations as may be necessary to give effect to the provisions of this Act.

SCHEDULE A.

Acts repealed.

Section 2.

- 37 Victoria, No. 3.—The Auctioneers Act, 1873.
- 44 Victoria, No. 19.—The Auctioneers Act Amendment Act, 1881.
- 61 Victoria, No. 11.—The Auctioneers Act, 1873, Further Amendment Act, 1897.

SCHEDULE B.

Form of Certificate for License.

Section 5.

I,....., Resident Magistrate of the District of....., do hereby certify that....., of....., having duly made application to me for a General (or Country or District) License under the Auctioneers Act, 1921-1938, I am satisfied that the said..... is a fit and proper person to be the holder of a license under the said Act, and I do hereby authorise the issue of a General License (or Country License, or License for the District of.....) under the said Act to him accordingly, such license to commence on the issue thereof and to expire on the 31st day of December, 19.....

Dated the.....day of....., 19.....

.....
Resident Magistrate.

SCHEDULE C.

Section 5.

Application for License.

To the Resident Magistrate of the
Magisterial District of.....

I,....., now residing at
....., do hereby apply for a general
(or Country) License (or a License for the Magisterial District of
.....) under the Auctioneers Act, 1921-1938,
and I give notice that I will bring such application before you for
hearing at....., on the.....
day of....., 19 , at.....o'clock in the
.....noon.

Dated the.....day of....., 19 .

Notice to be subscribed when application advertised.

N.B.—Any person wishing to object to this application may do so
provided he serves the prescribed notice on the applicant at least three
days before the hearing. Forms of notice may be obtained from the
Clerk of Petty Sessions at.....

SCHEDULE D.

Section 5.

Notice of objection to application for License.

To Mr.....

Take notice that I object to a General (or Country) License (or a
License for the Magisterial District of.....)
being granted to you under the Auctioneers Act, 1921-1938, and I intend
to oppose the application which you have made for such license, on the
grounds following:—

(Here set out grounds.)

Dated the.....day of....., 19 .

X.Y.

(Here insert address.)

SCHEDULE E.

Section 7.

FORMS OF LICENSE.

1.—General License.

Pursuant to the Auctioneers Act, 1921-1938,,
of....., is hereby licensed until the
31st day of December, 19..., to act as an auctioneer in and throughout
Western Australia.

Dated the.....day of....., 19 .

.....

Colonial Treasurer (or Collector of Revenue).

Auctioneers.

2.—*Country License.*

Pursuant to the Auctioneers Act, 1921-1938,
of....., is hereby licensed until the
31st day of December, 19..., to act as an auctioneer in and throughout
Western Australia save and except within the limits of the Metropolitan
Area.

Dated the.....day of....., 19 .

.....
Colonial Treasurer (*or* Collector of Revenue).

3.—*District License.*

Pursuant to the Auctioneers Act, 1921-1938,
of....., is hereby licensed until the
31st day of December, 19..., to act as an auctioneer in and throughout
the Magisterial District of..... [provided that
this license shall not extend to any part of the Metropolitan Area].

Dated the.....day of....., 19 .

.....
Colonial Treasurer (*or* Collector of Revenue).

Section 10.

SCHEDULE F.

Form of Order of Transfer to be indorsed on License.

I,, Resident Magistrate of the
District of....., having heard an application
by....., of.....
for an order transferring the within license to him, and being satisfied
that he the within licensee (*or* the legal personal representative of the
within licensee) has consented to the application, and that the said
..... is a fit and proper person to be the
holder of a license under the said Auctioneers Act, 1921-1938, do hereby
order that the within license be transferred, and the same is hereby
transferred to the said....., who shall henceforth have
the sole right to use and exercise the same, subject to the said Act.

Dated the.....day of....., 19 .

.....
Resident Magistrate.

Section 14.

SCHEDULE G.

Temporary License.

Whereas....., of.....,
is the holder of a General (*or* Country *or* District) License under the
Auctioneers Act, 1921-1938, and is desirous of selling by auction, by his
clerk or deputy, on the.....day of.....next,
at..... These are to certify that the said
....., having paid the sum of one guinea, is

authorised to act as an auctioneer under the said license, by his clerk or deputy, on the said.....day of.....next, at.....aforesaid.

Dated the.....day of....., 19 .

..... Resident Magistrate (or Police Magistrate).

SCHEDULE H.

Auctioneers Act, 1921-1938.

An Occasional District License.

Section 15.

WHEREAS (a) of (b) is the holder of a current district license issued under the Auctioneers Act, 1921-1938, in respect of the magisterial district of (c) and has made application under section fifteen of the said Act for an occasional district license to conduct as auctioneer a sale by auction on (d) the day of at (e) being a place situate within the magisterial district of (f) which is immediately contiguous with the said magisterial district of (g) and is not situate within the metropolitan area as defined in section four of the said Act and the said (h) has paid the prescribed license fee of one guinea, the said (i) is hereby authorised, subject to the said Act, to conduct as auctioneer a sale by auction on the said day of at aforesaid.

- (a) Full name of applicant.
(b) Address.
(c) Name of district specified in district license.
(d) Insert date of proposed sale.
(e) Insert place and address of premises where sale to be held.
(f) Insert name of magisterial district in which place of proposed sale is situate.
(g) As in (c) above.
(h) Applicant.
(i) Applicant.

Dated this day of 19 .

Stipendiary, Police or Resident Magistrate.