



Australian Capital Territory

# **Auctioneers Act 1959      No 2**

## **Republication No 5**

Republication date: 13 December 2001

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Auctioneers Act 1959* as in force on 13 December 2001. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Auctioneers Act 1959

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Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Auctioneers Act 1959

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An Act relating to auctioneers

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## **1 Short title**

This Act may be cited as the *Auctioneers Act 1959*.

## **3 Interpretation for Act**

### **(1) In this Act:**

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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

***charge*** means a charge that has not been dealt with by a court, but does not include a charge that has been withdrawn or otherwise not been proceeded with.

***convicted*** includes being discharged under the *Crimes Act 1900*, section 556A or an equivalent provision of a law of the Commonwealth, a State, another Territory or another country, but does not include a reference to a conviction that has been set aside on appeal or review.

***court*** means the Magistrates Court.

***licence*** means a licence issued under this Act.

***registrar*** means the registrar of the court, and includes the deputy registrar of the court.

### **(2) For this Act, a sale by auction is a public sale of property whereby—**

- (a)** the highest, the lowest or the only bidder is the purchaser; or
- (b)** the first person who claims property submitted for sale at a previously nominated price is the purchaser; or
- (c)** there is a competition for the purchase of property in any way commonly known and understood to be by way of auction.

#### **4 Auctioneers to be licensed**

- (1) Subject to subsection (2), a person shall not carry on the business of an auctioneer unless the person is the holder of a licence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) For subsection (1)—

- (a) the sale by auction of any property taken in execution by an officer of a court; or
- (b) the sale by auction by a person authorised by the Minister of any property belonging to the Territory or to an intestate estate; or
- (d) the sale by auction by a poundkeeper under the *Pounds Act 1928* of any cattle, as defined by that Act, impounded in a public pound;

shall not be deemed to be the carrying on of the business of an auctioneer.

#### **5 Applications for licences**

- (1) A person who is 18 years old or older may apply to the Magistrates Court for a licence by giving an application to the registrar.

*Note* If a form is approved under s 18 (Approved forms) for an application, the form must be used.

- (2) An application must be accompanied by—

- (a) a copy of the application; and
- (b) references about the applicant's character and suitability for holding a licence given by 3 qualified people.

- (3) In this section:

*elector*—see the *Electoral Act 1992*.

***qualified person*** means—

- (a) an elector who is a person referred to in the *Statutory Declarations Regulations* (Cwlth), schedule; or
- (b) another person approved by the court.

## **6 New licences**

- (1) Where an application for a licence is lodged with the registrar (not being an application to which section 7 applies) the registrar shall forthwith—
  - (a) appoint a date for the hearing of the application by the court, being a date not earlier than 21 days after the date on which the application is lodged with the registrar; and
  - (b) endorse on the copy of the application a notice stating the date so fixed and return the copy to the applicant.
- (2) The applicant shall—
  - (a) within 24 hours after lodging the application with the registrar lodge with the commissioner of police the copy of the application on which the registrar has made the endorsement referred to in subsection (1) (b); and
  - (b) not later than 14 days before the date appointed for the hearing of the application, cause to be published in a newspaper circulating in the ACT notice of his or her application.

*Note* If a form is approved under s 18 (Approved forms) for the application, the form must be used.

## **7 Renewal of licences**

- (1) Where—
  - (a) a person is the holder of a licence; and
  - (b) an application for a further licence to come into force on the expiration of that firstmentioned licence, together with a copy of the application is lodged with the registrar by that person



before the month of June in the year in which that firstmentioned licence will expire;

*Note* If a form is approved under s 18 (Approved forms) for the application, the form must be used.

the registrar shall forthwith—

- (c) appoint a date for the hearing of the application by the court, being a date not earlier than 14 June, and not later than 30 June, of that year; and
  - (d) endorse on the copy of the application a notice stating the date so fixed and return the copy to the applicant.
- (2) The applicant shall within 24 hours after lodging the application with the registrar lodge with the commissioner of police the copy of the application on which the registrar has made the endorsement referred to in subsection (1) (d).
- (3) The registrar shall, on or before 7 June in each year, cause to be published in a newspaper circulating in the ACT a notice—
- (a) stating the names and addresses of the persons who have made applications for licences under this section; and
  - (b) stating the date or respective dates appointed for the hearing of the applications.

## **8 Certificates of convictions**

- (1) The commissioner shall, not later than 5 days before the date appointed for the hearing of an application for a licence, furnish to the registrar for the use of the court a certificate stating whether, according to the records held by the commissioner, it appears that the applicant has been charged with, or convicted of, any offence against a law of the Territory, the Commonwealth, a State, another Territory or another country.
- (2) The applicant is entitled to inspect a certificate under subsection (1).

## **9 Objections to granting of licences**

- (1) Subject to subsection (2), the commissioner of police or any person who resides in the Territory may, upon the hearing of an application for a licence, object to the granting of the licence upon the ground that the applicant is not a fit and proper person to be the holder of a licence.
- (2) A person, including the commissioner of police, is not entitled to object to the granting of a licence unless, not later than 7 days before the date appointed for the hearing of the application for the licence, the person—
  - (a) files with the registrar a notice of objection setting out particulars of the ground of his or her objection; and
  - (b) serves a copy of the notice on the applicant.
- (3) Where the court is satisfied that an objection is frivolous or vexatious, the court may order the objector to pay to the applicant an amount equal to the whole or any part of the amount by which the costs of the applicant were increased by reason of the objection.
- (4) Where, as a result of an objection other than an objection by the commissioner of police, an application for a licence is refused, the court may order the applicant to pay the whole or any part of the costs of the objector.

## **10 Granting of licences**

- (1) Subject to section 11, where, upon the hearing of an application for a licence, the applicant satisfies the court that he or she is a fit and proper person to be the holder of a licence, the court may direct the registrar to issue a licence to the applicant and the registrar shall issue a licence to the applicant.

*Note* If a form is approved under s 18 (Approved forms) for a licence, the form must be used.

- (2) For the purpose of determining whether an applicant for a licence is a fit and proper person to hold the licence, the court may have regard to whether he or she—
  - (a) has been convicted of, or is subject to, a charge in relation to an offence—
    - (i) that involves fraud or dishonesty; or
    - (ii) against this Act or a corresponding law; or
  - (b) has been refused a licence under this Act or a corresponding law.
- (3) The court may, on the hearing of an application for a licence, request the commissioner of police to make such further enquiries as the court thinks fit and may adjourn the hearing to enable the commissioner to make the enquiries and furnish the report.
- (4) Where the granting of a licence in pursuance of an application to which section 7 of applies is not objected to, the application may be determined in chambers.
- (5) In this section:  
*corresponding law* means a law of a State, another Territory or another country that deals with the licensing or conduct of auctioneers.

## **11 Licence not to be granted in certain circumstances**

A licence shall not be granted to a person who is licensed to carry on the business of a pawnbroker under a law of the Territory or of any State.

## **12 Duration of licences**

- (1) Subject to this section and to section 13, a licence comes into force on the day on which it is issued and continues in force until 30 June next following that firstmentioned day.

- (2) Subject to section 13, a licence granted pursuant to an application to which section 7 applies comes into force on 1 July next following the day on which the application was lodged with the registrar and continues in force until 30 June next following that firstmentioned day.

### **13 Cancellation and suspension of licences**

- (1) The court may, on the application of the commissioner of police, cancel a licence if the court is satisfied—
  - (a) that the holder of the licence is not qualified to be the grantee of a licence by virtue of section 11; or
  - (b) that he or she is not a fit and proper person to be the holder of a licence.
- (2) Where the commissioner of police has applied to the court for the cancellation of a licence, the court may, pending the determination of the application, suspend the licence.
- (3) Where the holder of a licence is convicted of an offence against this Act, the court may cancel the licence or suspend the licence for such period as the court thinks fit.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (4) Where a licence expires, is cancelled or is suspended, the holder of the licence shall forthwith deliver the licence to the registrar.

Maximum penalty: 5 penalty units.

### **14 Misrepresentation as to quality etc of property**

An auctioneer shall not knowingly misrepresent, or cause or permit to be misrepresented, the composition, structure, character, quality, origin or manufacture of any property offered by the auctioneer for sale by auction.

Maximum penalty: 30 penalty units.

**15 Record to be kept by auctioneers**

- (1) An auctioneer shall forthwith record, in a book to be kept by him or her for the purpose, full particulars of any property sold by the auctioneer at auction and shall preserve the record so made in respect of any sale for a period of at least 12 months after the date of the sale.

Maximum penalty: 10 penalty units.

- (2) An auctioneer shall, when at any reasonable time so requested by a member of the police force, produce to the member the book kept by the auctioneer for subsection (1).

Maximum penalty (subsection (2)): 5 penalty units.

**16 Bids by seller**

Where, under the conditions of sale relating to a sale by auction, a right to bid by or on behalf of the seller is not specified—

- (a) the seller shall not bid at the sale; and
- (b) the seller shall not cause any person to bid on his or her behalf at the sale; and
- (c) a person shall not bid on behalf of the seller at the sale; and
- (d) the auctioneer shall not knowingly take a bid from the seller or any person bidding on behalf of the seller.

Maximum penalty: 50 penalty units.

**17 Amendment of notices etc and extensions of time**

On the hearing of an application under this Act, the court may, for the application, and on terms as to costs or otherwise as it deems fit—

- (a) permit the amendment of a notice, document or instrument; and

- (b) if satisfied that injustice to any person will not be occasioned by so doing, disregard a defect in a notice, document or instrument; and
- (c) enlarge or abridge the time fixed by this Act for doing any act or thing, whether the application for the enlargement or abridgement is made before or after the expiration of the time so fixed.

## **18 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) A form in schedule 2 immediately before the commencement of this section is, after the commencement, taken to be an approved form.
- (5) However, the form need not be notified under the *Legislation Act 2001*.
- (6) Subsections (4) and (5) are laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (7) Subsections (4) to (6) and this subsection expire 1 year after this section commences.

## **19 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

## Endnotes

3 Legislation history

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### 3 Legislation history

The *Auctioneers Act 1959* was originally the *Auctioneers Ordinance 1959*. It became an ACT Act on self-government (11 May 1989).

Before 11 May 1989, ordinances commenced on notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before self-government

##### **Auctioneers Act 1959 No 2**

notified 25 March 1959

commenced 25 March 1959

as amended by

##### **Auctioneers Ordinance (No 2) 1959 No 15**

notified 19 November 1959

commenced 19 November 1959

##### **Ordinances Revision (Decimal Currency) Ordinance 1966 No 19**

notified 23 December 1966

commenced 23 December 1966

##### **Ordinances Revision (Age of Majority) Ordinance 1974 No 47**

notified 24 October 1974

commenced 1 November 1974 (s 2)

##### **Magistrates Court Ordinance 1985 No 67 sch pt 1**

notified 19 December 1985

sch pt 1 commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

#### Legislation after self-government

##### **Magistrates and Coroner's Courts (Registrar) Act 1991 No 44**

notified 20 September 1991 (Gaz 1991 No S95)

s 1, s 2 commenced 20 September 1991 (s 2 (1))



remainder commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

**Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1**

notified 1 March 1993 (Gaz 1994 No S23)

sch 1 commenced 1 March 1993

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)

s 1, s 2 commenced 15 December 1994 (s 2 (1))

sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

**Auctioneers (Amendment) Act 1995 No 14**

notified 30 June 1995 (Gaz 1995 No S135)

commenced 30 June 1995 (s 2)

**Uncollected Goods (Consequential Provisions) Act 1996 No 87 s 3**

notified 20 December 1996 (Gaz 1996 No S328)

s 1, s 2 commenced 20 December 1996 (s 2 (1))

s 3 commenced 19 March 1997 (s 2 (2) and Gaz 1997 No S71)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 26**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 26 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

## 4 Amendment history

**Repeal**

s 2 om 2001 No 44 amdt 1.295

**Interpretation for Act**

s 3 am 1985 No 67; 1991 No 44; 1993 No 1; 1995 No 14; 2001 No 44 amdt 1.296

**Auctioneers to be licensed**

s 4 am 1959 No 15; 1966 No 19; 1989 No 38; 1993 No 1; 1994 No 97; 1995 No 14; 1996 No 87; 1998 No 54

## Endnotes

### 4 Amendment history

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#### **Applications for licences**

- s 5 am 1974 No 47; 1991 No 44; 1993 No 1  
sub 1995 No 14  
am 2001 No 44 amdt 1.297, amdt 1.298

#### **New licences**

- s 6 am 1991 No 44; 1993 No 1; 2001 No 44 amdt 1.299, amdt 1.300

#### **Renewal of licences**

- s 7 am 1991 No 44; 1993 No 1; 1995 No 14; 2001 No 44 amdt 1.301-1.303

#### **Certificates of convictions**

- s 8 am 1991 No 44; 1993 No 1  
sub 1995 No 14

#### **Objections to granting of licences**

- s 9 am 1991 No 44; 1993 No 1; 1995 No 14

#### **Granting of licences**

- s 10 am 1966 No 19; 1991 No 44; 1993 No 1; 1995 No 14; 2001 No 44 amdt 1.304, amdt 1.305; R5 LA

#### **Licence not to be granted in certain circumstances**

- s 11 am 1993 No 1; 1995 No 14

#### **Duration of licences**

- s 12 am 1991 No 44; 1993 No 1

#### **Cancellation and suspension of licences**

- s 13 am 1966 No 19; 1991 No 44; 1993 No 1; 1998 No 54; 2001 No 44 amdt 1.306, amdt 1.307

#### **Misrepresentation as to quality etc of property**

- s 14 am 1966 No 19; 1993 No 1; 1998 No 54

#### **Record to be kept by auctioneers**

- s 15 am 1966 No 19; 1993 No 1; 1998 No 54

#### **Bids by seller**

- s 16 am 1966 No 19; 1993 No 1; 1998 No 54

#### **Amendment of notices etc and extensions of time**

- s 17 am 2001 No 44 amdt 1.308

#### **Approved forms**

- s 18 am 1966 No 19; 1989 No 38; 1993 No 1; 1998 No 54  
sub 2001 No 44 amdt 1.309  
(4)-(7) exp 12 September 2002 (s 18 (7))

#### **Regulation-making power**

- s 19 orig s 19 am 1993 No 1  
om LRA  
ins 2001 No 44 amdt 1.309

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**Ordinances repealed by this Act**

sch 1 om 2001 No 44 amdt 1.310

**Schedule 2**sch 2 hdg sub LRA  
sch 2 am 1985 No 67; 1991 No 44; 1993 No 1  
om 2001 No 44 amdt 1.310**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Republication No	Amendments to	Republication date
1	Ord 1989 No 38	31 May 1991
2	Act 1993 No 1	30 April 1993
3	Act 1995 No 14	31 January 1996
4	Act 1998 No 54	28 February 1999

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