

1993—No. 62

AUCTIONEERS AND AGENTS ACT 1941—REGULATION

(Amendments arising out of the Auctioneers and Agents (Amendment) Act 1992)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Auctioneers and Agents Act 1941, has been pleased to make the Regulation set forth hereunder.

ROBERT WEBSTER,
Minister for Housing.

Commencement

1. This Regulation commences on 1 March 1993

Amendments

2. The Auctioneers and Agents Regulations are amended:

(a) by inserting in Regulation 2 in alphabetical order the following definition:

“**residential property**” has the same meaning as in Division 8 of Part 4 of the Conveyancing Act 1919;

(b) by omitting Regulation 16 (1) and by inserting instead the following clause:

(1) For the purposes of section 23 (2) (d) of the Act:

(a) the prescribed application fee for a licence is \$135; and

(b) the prescribed administration fee is \$405; and

(c) the prescribed contribution is \$135.

(c) by inserting after Regulation 16 the following Regulation:

Variation of former general auctioneer's licence

16A. (1) This clause applies in respect of a person who:

- (a) is the former holder of a general auctioneer's licence that ceased to have effect because of Schedule 2 to the Act; and
- (b) has appealed under clause (5) of that Schedule against a decision of the General Manager under clause (4) of that Schedule.

(2) A Local Court may make orders providing that, from the commencement of Schedule 2 to the Act or the date of the order (whichever is the later), the person is taken to be the holder of either or both of the following:

- (a) a real estate agent's licence restricted in its operation under section 22 (1A) to the auctioning of land other than land that is:
 - (i) land used for agricultural or pastoral purposes; and
 - (ii) greater than 2.5 hectares in area;
- (b) a stock and station agent's licence restricted in its operation under section 22 (1A) to the auctioning of:
 - (i) land used for agricultural or pastoral purposes; or
 - (ii) livestock; or
 - (iii) both livestock and land used for agricultural or pastoral purposes,

until the determination or withdrawal of the appeal.

(3) A person in respect of whom a Local Court makes such an order must notify the Council in writing within 7 days after the making of the order.

(4) If the date on which the person's general auctioneer's licence would have expired had it not ceased to have effect is reached during the currency of the order, the person must, within 21 days after that date, pay to the Council a renewal fee appropriate to the licence of which the person is taken to be the holder.

- (d) by omitting from Regulation 20 the matter "or 52A (3)";
- (e) by omitting from Regulation 20 the words "superintendent of licences appointed under section 106 (1) of the Liquor Act 1982" and by inserting instead the words "reviewing officer";
- (f) by omitting from Regulation 20A (1) the matter "or 52A (4)";
- (g) by omitting from Regulation 20A (1) the words "those subsections" and by inserting instead the words "that subsection";

- (h) by omitting from Regulation 20A (2) (b) and (c) the words “Superintendent of Licences” wherever occurring and by inserting instead the words “reviewing officer”;
- (i) by omitting from Regulation 47 and from the definition of “property” in clause (1) of Schedule 2 the words “real or personal property” wherever occurring and by inserting instead the words “land or livestock”;
- (j) by omitting from Regulation 52 the words “or real estate dealer” wherever occurring;
- (k) by omitting Regulations 59–61;
- (l) by omitting from Regulation 62 (i) the words “, who sells personal property by auction where the possession of the property” and by inserting instead the words “who, in the course of his or her business as an auctioneer, sells livestock by auction where the possession of the livestock”;
- (m) by omitting from Regulations 63 and 64 the words “real property” wherever occurring and by inserting instead the word “land”;
- (n) by omitting from Regulations 64 (b)–(e) and 65 (a) the word “property” wherever occurring and by inserting instead the word “land”;
- (o) by omitting from the proviso to Regulation 64 the word “property” where secondly occurring and by inserting instead the word “land”;
- (p) by omitting from Regulation 65 the words “real property is sold by auction the auctioneer selling same” and by inserting instead the words “an auctioneer in the course of his or her business as an auctioneer sells land by auction, the auctioneer”;
- (q) by omitting from Regulation 66A (1) and (2) the words “or a stock buying agent” wherever occurring;
- (r) by omitting from Regulation 66A (1) the words “, as the case may be,”;
- (s) by omitting from Regulation 66A (3) the words “or stock buying agent”;
- (t) by omitting Regulation 66C and by inserting instead the following Regulation:

Auction sales—prescribed conditions

66C. For the purposes of section 85B of the Act, the conditions set out in Schedule 3 are prescribed as applicable to and in respect of the sale by auction of land or livestock.

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- (u) by omitting from Regulations 66D and 66E the word “property” wherever occurring and by inserting instead the words “land or livestock”;
- (v) by omitting Regulation 71 (9);
- (w) by omitting from Regulation 75 the words “, holder of a certificate of registration or registered real estate dealer” and by inserting instead the words “or holder of a certificate of registration”;
- (x) by omitting the definition of “holder” in clause (1) of Schedule 2 and by inserting instead the following definition:

“**holder**” means a person who holds a licence or certificate of registration under the Act;
- (y) by omitting from clauses (1A) and (2) of Schedule 2 the words “or registered real estate dealer” wherever occurring.

EXPLANATORY NOTE

The object of this Regulation is to amend the Auctioneers and Agents Regulations to permit the commencement of certain provisions of the Auctioneers and Agents (Amendment) Act 1992 and to reflect the changes made by them.

In particular, the Regulation reflects the following alterations:

- the deregulation of the auctioning of all property other than land and livestock (clause 2 (i), (k), (l), (p) and (t)–(v))
- the abolition of certain classes of licences and certificates of registration (clause 2 (j), (q), (s), (u) and (w)–(y))
- a new regulation-making power in respect of certain licences abolished by the amending Act (clause 2 (c))
- the extension of the terms of licences under the Act from 1 to 3 years (clause 2 (b), which also increases the relevant fees)
- the repeal of certain sections of the Act (clause 2 (d) and (f))
- the substitution of references to a new position for one that no longer exists (clause 2 (e) and (h))

The Regulation also:

- substitutes references to “land” for references to “real property” for consistency with the Act as amended (clause 2 (m)–(o))
- makes consequential amendments (clause 2 (a), (g) and (r))

The Regulation is made under sections 23 (2) (d), 85B and 92 (the general regulation-making power) of the Act and Schedule 2 (4) to the Act (as inserted by Schedule 4 to the Auctioneers and Agents (Amendment) Act 1992).
