



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**
Consumer Protection



Decision Regulatory Impact Statement

**The regulation of the auction sales industry
in Western Australia**

September 2019

THE REGULATION OF THE AUCTION SALES INDUSTRY IN WESTERN AUSTRALIA DECISION REGULATORY IMPACT STATEMENT

This Decision Regulatory Impact Statement (DRIS) has been prepared in compliance with the Western Australian (WA) Government's requirement for Regulatory Impact Assessment.

The purpose of this DRIS is to recommend the preferred option for regulating the auction sales industry in WA.

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CONTENTS

EXECUTIVE SUMMARY	5
1 REVIEW OF THE AUCTION SALES ACT	7
1.1 Purpose of the review	7
1.2 Review process	7
1.3 Stakeholder response to the CRIS	8
2 BACKGROUND	10
2.1 The auction process	10
2.2 Types of auctions	10
2.3 Legislation that affects the auction sector	11
2.4 Previous review of the Auction Sales Act	12
2.5 Transfer of responsibility	12
3 AUCTION SECTOR IN WA	13
3.1 Profile of the auction industry in WA	13
3.2 Number of licensed auctioneers	13
3.3 Licence fees	13
3.4 Complaints and enquiries	13
3.5 Key factors affecting the auction sector	14
3.5.1 Technology and online auctions	14
3.5.2 Australian Consumer Law	15
3.5.3 Uneven playing field	16
3.5.4 Dual regulation: real estate agents and motor vehicle dealers	18
3.5.5 Financial failure of auction businesses	18
4 OBJECTIVES AND RATIONALE	19
4.1 Objectives of the Auction Sales Act	19
4.2 Rationale for government intervention in the auction sector	19
5 LEGISLATIVE FRAMEWORK	20
5.1 Key aspects of the Auction Sales Act	20
5.2 Recent amendments	21
5.3 Current conduct provisions	22
5.4 Proposed additional conduct provisions	22
5.5 Recommendations relating to conduct provisions	22

6	ASSESSMENT OF OPTIONS AND IMPACT ANALYSIS	25
6.1	Option A – Retain the status quo	26
6.2	Option B – Retain licensing and introduce additional conduct provisions	30
6.3	Option C – Introduce a negative licensing system	34
6.4	Option D – Repeal the Auction Sales Act	37
7	PREFERRED OPTION	40
8	IMPLEMENTATION AND EVALUATION STRATEGY	41
8.1	Implementation	41
8.2	Evaluation	41
9	APPENDICES	42
9.1	Overview of submissions	42
9.2	Stakeholder views – key points	44
9.3	Penalty Matrix: <i>Auction Sales Act 1973</i>	55
9.4	WA Acts referencing sale by public auction	56
9.5	WA Regulations referencing sale by public auction	57

ABBREVIATIONS

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ALPA	Australian Livestock & Property Agents Association
AVAA	Auctioneers and Valuers Association of Australia
AVAWA	Auctioneers and Valuers Association of WA
CAC	Consumer Advisory Committee
CAF	Legislative and Governance Forum on Consumer Affairs
CRIS	Consultation Regulatory Impact Statement
DMIRS	Department of Mines, Industry Regulation and Safety
DRIS	Decision Regulatory Impact Statement
FTA	<i>Fair Trading Act 2010</i>
MVD Act	<i>Motor Vehicle Dealers Act 1973</i>
REBA Act	<i>Real Estate and Business Agents Act 1978</i>
REIWA	Real Estate Institute of Western Australia
SAT	State Administrative Tribunal
SBDC	Small Business Development Corporation
WA Farmers	Western Australian Farmers Federation

EXECUTIVE SUMMARY

The Department of Mines, Industry Regulation and Safety – Consumer Protection Division (Consumer Protection) undertook a review of the *Auction Sales Act 1973* (Auction Sales Act) to determine whether auctioneers should continue to be licensed and the extent to which the legislation needs to regulate the conduct of auctioneers.

This Decision Regulatory Impact Statement (DRIS) is part of the regulatory impact assessment process and sets out recommendations based on an analysis of submissions to the review and of the costs and benefits of proposed options for reform.

Consumer Protection considered four options for regulating the auction sales industry and these included:

- retaining the status quo and making no changes to the current licensing system and conduct provisions (Option A);
- retaining licensing and introducing additional conduct provisions (Option B);
- introducing a negative licensing system (Option C); and
- deregulating the auction sales industry and repealing the Auction Sales Act leaving the *Australian Consumer Law* (ACL) and the *Sale of Goods Act 1895* to apply to auction sales (Option D).

Preferred option

The DRIS recommends amendments to the Auction Sales Act which would result in the legislation regulating the auction sales industry through a negative licensing scheme (Option C). This form of regulation minimises the regulatory burden on auctioneers as they would not need a licence to operate. However they would still be required to comply with conduct provisions within the Auction Sales Act and unfit persons could be excluded from the industry. Additional conduct provisions would be included in the Auction Sales Act to address conduct relating to bidding practices, collusive behaviour, disclosure, record keeping, holding of trust accounts and a number of other practices.

Consumer Protection considers that the regulation of auctioneers via negative licensing will implement a regulatory framework that is well targeted, proportionate to the risks to consumers and businesses, and responsive to the changing circumstances and needs of the auction sales industry. Additionally under Option C real estate auctioneers and motor vehicle auctioneers already licensed as agents and dealers under the *Real Estate and Business Agents Act 1978* (REBA Act) and the *Motor Vehicle Dealers Act 1973* (MVD Act), respectively, would not be required to hold a licence under the Auction Sales Act. They would, however, still be required to comply with all the current and proposed conduct provisions of the Auction Sales Act.

In recommending this regulatory model Consumer Protection took a variety of factors into consideration including the low level of complaints relating to auctioneers in WA over the past ten years, technological changes and online auctions, the introduction of the Australian Consumer Law, the regulatory schemes in other Australian jurisdictions, the lack of consistency in the regulation of auctioneers across Australia, and the study of the cattle and beef market conducted by the Australian Competition and Consumer Commission (ACCC).¹

Under the current legislation all auctioneers must apply to the Magistrates Court to be licensed. As part of the reforms Consumer Protection proposes that full administrative responsibility for the regulation and oversight of auctioneers transfer from the Magistrates Court to Consumer Protection and this proposal is supported by all stakeholders.

¹ ACCC *Cattle and Beef Market Study Final Report* March 2017.

Consultation process

On 16 December 2016 Consumer Protection released a Consultation Regulatory Impact Statement (CRIS) for a 15 week consultation period ending on 31 March 2017. Consumer Protection also conducted a three week online consumer survey. The CRIS presented the four options for stakeholders to consider and provide their feedback.

In response to the CRIS, Consumer Protection received a total of 42 submissions from the following respondents:

- individual auctioneers and representatives from various auction businesses;
- Australian Livestock and Property Agents Association (ALPA)²;
- Western Australian Farmers Federation (WA Farmers)³;
- Real Estate Institute of Western Australia (REIWA)⁴;
- Auctioneers and Valuers Association of Australia (AVAA)⁵;
- Consumer Advisory Committee (CAC)⁶;
- Small Business Development Corporation (SBDC)⁷; and
- Department of Justice.

Three consumers also made submissions to the CRIS and twelve people answered the consumer survey.

Respondents' preferred options

Eight respondents comprising four from the real estate industry, one from the motor vehicle industry, one general auctioneer, and two from the fine arts, antiques and collectables industry supported Option A (status quo).

Twenty one respondents supported Option B (retaining licensing and introducing additional conduct provisions) with a significant number of these respondents being auctioneers who conduct real estate auctions. ALPA, WA Farmers and a heavy machinery company also strongly supported this option. In contrast, 12 of the 42 respondents rejected the positive licensing regimes proposed by Options A and B and supported either a negative licensing regime (Option C) or deregulation (Option D).

Six respondents, including a real estate agency, a general auctioneer, a respondent from a sea food company, the AVAA, the CAC and the SBDC supported Option C (introducing a negative licensing system) Two respondents, namely a national motor vehicle company, and an auctioneer who owns a fine art, antiques and collectables business, were prepared to support either Options C or D.

Four respondents supported Option D (deregulating the auction sales industry) and these included REIWA, a real estate agent, a general auctioneer, a respondent from the plant and machinery sector, and a respondent from the fine arts, antiques and collectables industry. One submission did not provide a clear preference for any of the proposed options.

Nine of the 12 respondents to the online consumer survey indicated that auctioneers should continue to be licensed.

² ALPA is the national peak industry body for livestock and property agents.

³ WA Farmers is a member based rural advocacy and service organisation representing primary production businesses and individual farmers, including grain growers, meat and wool producers, dairy farmers and beekeepers.

⁴ REIWA is the peak industry body representing the interests of real estate agents and real estate auctioneers and has a chapter which specialises in real estate auctions.

⁵ AVAA is a national association representing auctioneers and has eleven WA members.

The Auctioneers and Valuers Association of WA (AVAWA) is no longer operating.

⁶ The CAC was established under section 63I of the *Fair Trading Act 2010* to advise the Minister and the Commissioner on consumer issues.

⁷ The SBDC is an independent statutory authority that supports small businesses in WA.

1 REVIEW OF THE AUCTION SALES ACT

1.1 Purpose of the review

The review of the Auction Sales Act was undertaken to assess its relevance and appropriateness in meeting current market and industry needs. The legislation that was introduced nearly 50 years ago has not changed substantially and yet the marketplace has changed significantly during this time. Various factors, including technology and online auctions, have changed the way many auctions are now conducted. In addition, the general provisions of the Australian Consumer Law are now also available to protect consumers against unfair business practices.

Key issues in the review were to:

- examine whether the legislation is still operating effectively and in a manner that is fair and competitive, and whether it reflects best practice and is consistent with other Australian states and territories;
- identify aspects of the Auction Sales Act which may not be suited to the marketplace;
- develop proposals for legislative reform that promote fair trading practices and appropriately address the risks to buyers and sellers; and
- ensure that the regulation of auctioneers is proportionate to current and future risks and that the benefits of the preferred option outweigh the costs to industry, consumers and government.

1.2 Review process

Consumer Protection released a Consultation Regulatory Impact Statement (CRIS) on 16 December 2016 for a 15 week consultation period ending on 31 March 2017. The CRIS canvassed four options as detailed in Table 1.

Table 1: Options for the regulation of the auctions sales industry

Option A:	Retain the status quo, that is, make no changes to the current licensing system and conduct provisions.
Option B:	Retain licensing and introduce additional conduct provisions.
Option C:	Introduce a negative licensing system. The <i>Auction Sales Act 1973</i> would be retained, but auctioneers would not require a licence to operate. The Auction Sales Act would continue to regulate the conduct of auctioneers and exclude unfit persons from the industry.
Option D:	Deregulate the auction sales industry and repeal the Auction Sales Act leaving the <i>Australian Consumer Law (ACL)</i> and the <i>Sale of Goods Act 1895</i> to apply to auction sales.

The Commissioner for Consumer Protection released a media statement on 22 December 2016, inviting submissions. Consumer Protection's feature columns that appear regularly in community newspapers also promoted the CRIS. In addition, all licensed auctioneers were advised about the review. A consumer survey, aimed at attracting responses from the general public, was available on social media from 21 March 2017 to 14 April 2017.

1.3 Stakeholder response to the CRIS

Consumer Protection received 42 submissions to the CRIS and 12 responses to the consumer survey. Table 2 shows that the responses to the CRIS came from five main sources, these being individual auctioneers (mainly real estate auctioneers), representatives from two specialised industries, these being the plant and machinery and the sea food sectors, industry associations, government agencies, and consumers.

Table 2 – Categories of respondents and number of submissions⁸

Category of respondents		Number
Individual auctioneers	Real estate	18
	Motor vehicles	3
	General	5
	Fine art, antiques, jewellery and collectables	3
Industry representatives	Plant and machinery	2
	Sea food	1
Associations	Auctioneers & Valuers Association of Australia (AVAA)	1
	Real Estate Institute of Western Australia (REIWA)	1
	Australian Livestock & Property Agents Association (ALPA)	1
	The Western Australian Farmers Federation (WA Farmers)	1
Government	Small Business Development Corporation (SBDC)	1
	Department of Justice	1
	Consumer Advisory Committee (CAC)	1
Consumers	Individual members of the community	3
		Total 42

Stakeholder response to Options A to D

Eight respondents, mainly individual real estate auctioneers, supported Option A. Twenty- one respondents supported Option B. This group comprised individual real estate auctioneers, a company dealing with mining and farming machinery, as well as associations representing pastoralists and farmers (WA Farmers), a representative from the sectors for livestock, wool, agricultural products and rural property (ALPA), and a representative from a heavy machinery company.

Six respondents supported Option C including a real estate agency, a national company that auctions motor vehicles, a general auctioneer, a representative from a seafood company, the AVAA, the CAC, and the SBDC. These respondents did not support the licensing of auctioneers but supported introducing additional conduct provisions.

Four respondents supported Option D and included REIWA, an individual real estate agent, a general auctioneer, a national motor vehicle company, a representative from the plant and machinery sector, and a respondent from the fine arts, antiques collectables and jewellery industry sector. Two respondents were prepared to support either Option C or D and one respondent did not provide a clear view of any of the options.

Nine of the twelve respondents to the consumer survey agreed that auctioneers should continue to be licensed and that there should be specific laws about the conduct of auctioneers (Options A and B). None of the respondents agreed to negative licensing (Option C). One respondent supported deregulating the auction sales industry (Option D). Two people did not provide a response to this part of the survey.

⁸ Appendix 9.2 summarises the key points made by respondents to the CRIS.

None of the respondents to the consumer survey had suffered any major financial loss as a buyer or a seller in their dealings with auctioneers but half had experienced some problems involving misrepresentations and false statements about the goods for sale.

Summary of respondents' preferred options

The analysis of the responses to the CRIS revealed that stakeholder views and preferences as to the best regulatory option were divided. The responses differed substantially depending on the perspectives of different parts of the auction sales industry. Very few responses came from general auctioneers and the majority of individual auctioneers that responded provided very brief responses across the full range of Options A to D.

Real estate auctioneers in particular supported the licensing of auctioneers. Several respondents wanted the status quo (Option A) to be retained, but would accept very minor improvements. The majority supported Option B and agreed that the conduct provisions should be increased. A few in this group wanted additional licensing criteria and training provisions to be introduced.

ALPA, the national body for the agricultural sector, which includes auctioneers of livestock, wool, and agricultural products, also strongly supported the licensing regime proposed by Option B and strongly opposed Options C and D stating that "deregulation is fraught with danger and the auction process is associated with large sums of money leaving an opening to corruption to the consumer's detriment".

Support for Option C (negative licensing) came from the AVAA and other respondents who recognised the cost benefits of Option C. The SBDC supported Option C to "remove the regulatory burden of the current licensing requirements under the Auction Sales Act and also strengthening some conduct provisions to improve transparency and fairness for small businesses involved in auctions".

In addition, the majority of members of the CAC supported Option C on the proviso that an appropriate education strategy be developed so that consumers are able to easily access information about auctions on Consumer Protection's website and have access to information immediately prior to bidding at an auction.

Support for Option D came from REIWA and businesses, such as the seafood and plant and machinery industries, in which transactions are between businesses rather than between businesses and consumers.

REIWA's position as an industry body was different to that of individual real estate auctioneers. REIWA's position was premised on continuing occupational licensing of real estate agents who may also conduct auctions but repealing the Auction Sales Act and proceeding with full deregulation of licensing of auctioneers in WA. REIWA stated that "real estate agents are already subject to a strict regulatory regime that protects the public and maintains public confidence in the profession by reinforcing high professional standards and denouncing transgressions through the court system". In addition, REIWA requires education and experience standards of their members. REIWA maintains that real estate agents who conduct auctions are therefore already subject to a high level of government regulation and industry self-regulation and the loss of a real estate agent's licence could result from improper behaviour as a real estate auctioneer. REIWA was therefore firmly in favour of Option D.

2 BACKGROUND

2.1 The auction process

The auction process remains an important method of conducting transactions in a market economy and is growing through online auctions making goods more readily accessible to prospective bidders. Auctions and auctioneers play a significant role in ascertaining the market price of goods. Apart from calling the bids and acting as agents for the sale of goods and property, auctioneers may also provide related services prior to an auction, such as valuing goods and assisting vendors in setting a reserve price.

Auctions are also seen to be the fairest way of establishing value and ensuring that parties are treated equitably. The honest and efficient operation of the auction industry impacts on the performance of the economy as a whole.

It is for the above reasons that numerous pieces of legislation require public property to be sold by auction.⁹ Uncollected, abandoned, forfeited or confiscated goods, and various types of public property, including buildings and land, must be sold by public auction or public tender under certain circumstances. The services of an auctioneer, therefore, may be on behalf of government departments, banks, deceased estates, property management firms, storage companies, and many other public, commercial and industrial interests.

2.2 Types of auctions

Traditional auctions

Traditionally, auctions have been conducted at a physical location, such as the premises of the auctioneer, with the auctioneer and bidders present. A range of auctions are also conducted on-site, for example real estate auctions or auctions for livestock, wool, wheat, wine, seafood and agricultural machinery which may occur at stock yards, wool sheds, granaries, vineyards, wharfs and mining sites.

Online auctions

Increasingly, auctions are occurring online with the internet changing the way many auctioneers now conduct auctions, including by allowing the participation in traditional auctions via this medium. In some cases, however, due to the increasing costs of maintaining physical premises, some auction businesses have closed their “in person” auction facilities and have moved their operations to online formats.

The following types of auctions are now typically available online.¹⁰

Marketplace online auctions - these are a popular way of buying, with a well-known example being eBay. In these virtual markets, a business sets up the website and provides a set of rules and guidelines, but it is left to the individual buyers and sellers to deal directly with each other. The seller sets the first bid or reserve for the goods and then receives bids on the goods. The online auction site provides the means to do this, but the companies that manage these sites are not agents of the vendor with a duty to extract the highest possible bid or make best endeavours to sell the goods for the vendor.¹¹

⁹ A search of the Parliamentary Counsel's Office Western Australian legislation database identified 69 Acts or regulations that require public property to be sold by auction (see Appendices 9.4 and 9.5).

¹⁰ The extract about types of online auctions is taken from the ACCC website page “eBay & online auctions”: <https://www.accc.gov.au/consumers/online-shopping/eBay-online-auctions>.

¹¹ The eBay User Agreement requires users to acknowledge that eBay is not an auctioneer but instead provides sites to allow anyone to offer, sell and buy just about anything, at any time, from anywhere, in a variety of pricing formats and locations.

As such, the internet companies are not classed as auctioneers unless they also engage in auctioneering activities.

Traditional auctions online - this is where the auctioneer acts on behalf of the seller of the goods and instead of interested buyers gathering together in person, a website is used to create a virtual auction. In this type of auction, the auctioneer is an agent for the seller. Using online auction forums, traditional auction companies are able to reach wider audiences and may achieve higher prices for their vendors. A recent example of this type of online auction is a method called “*open negotiation*” which provides for the auctioning of residential properties. The real estate agent advertises properties for sale online and provides a facility for buyers to bid against each other until the highest bid is reached.¹²

Auctions conducted by website - this is where a business through its own website offers their own products for sale by an “auction” process.

2.3 Legislation that affects the auction sector

Auction Sales Act

Auctioneers in WA are primarily regulated by the Auction Sales Act and must meet certain criteria to be licensed. The Auction Sales Act requires that all types of auctioneers must be licensed no matter what types of goods or property they deal in. Part 5.1 of this paper outlines key aspects of the Auction Sales Act.

Auctioneers must also abide by certain conduct rules, for example they may not bid for their own account, or if they do, must disclose this to bidders at the auction. Part 5.3 lists the current conduct rules in the Auction Sales Act.

Sale of Goods Act

The *Sale of Goods Act 1895* (Sale of Goods Act) also applies some additional specific provisions in relation to the conduct of auctions.

Section 57, the Sale of Goods Act states that:

- the seller bidding provisions make it unlawful for the seller, or a third party, to bid on behalf of the seller unless notification was given;
- a bidder has the right to retract a bid before the fall of the hammer; and
- a seller has the right to set a reserve price.

The Sale of Goods Act does not duplicate the provisions of the Auction Sales Act except in its reference to seller (vendor) bidding.¹³

Australian Consumer Law

The Australian Consumer Law (ACL) commenced on 1 January 2011 to provide a broad range of consumer protection provisions when consumers transact with businesses in the purchase of goods or services. In WA the ACL applies as a schedule under the *Fair Trading Act 2010* (FTA). The provisions of the ACL and its effects on the auction sector are outlined at part 3.5.2 of this paper.

¹² How does ‘open negotiation’ work? by REIWA President Hayden Groves: reiwa.com 4 December 2017.

¹³ Sale of Goods Act section 57 (3).

2.4 Previous review of the Auction Sales Act

A final report from the previous review of the Auction Sales Act was released on 8 August 2007. Feedback to the report resulted in a position paper, dated February 2008, which recommended that licensing of auctioneers continue and that additional conduct provisions be included in the Auction Sales Act to regulate the conduct of licensees and participants in the auction process.

The conduct provisions related to vendor and dummy bidding, collusive practices, buyers' premiums, disclosure of sale or purchase by auctioneers, harassment and disruptive behaviour, standard conditions or rules of conduct, record keeping, holding of trust accounts and online auctions. In addition, the 2008 review recommended increasing the penalties for offences under the Auction Sales Act.¹⁴ These recommendations were carried over to the current review and are detailed in part 5.5 of this paper.

2.5 Transfer of responsibility

The previous review also recommended that the regulation of auctioneers transfer from the Magistrates Court to Consumer Protection, a proposal that Consumer Protection supports.¹⁵

While Consumer Protection would be the responsible agency under all four options, only Options A and B propose to retain licensing. Under these two options, the Commissioner for Consumer Protection would become the licensing authority.¹⁶

All the options result in Consumer Protection being responsible for providing information and advice to consumers and industry, supporting policy and legislative functions, investigating complaints of unfair practices, and carrying out compliance and enforcement functions. Options C and D result in there not being a licensing revenue stream to cover the costs associated with regulation.

The State Administrative Tribunal (SAT) would be responsible for hearing disciplinary and conduct matters.

¹⁴ The recommended penalty increases in WA are contained in the Consumer Protection Legislation Amendment Bill 2018. Appendix 9.3 details the proposed penalties and those for breaches of equivalent legislation in other Australian jurisdictions.

¹⁵ This recommendation was not implemented due to the proposed introduction of a National Occupational Licensing System (NOLS) in 2008. In 2013 the implementation of NOLS was discontinued.

¹⁶ The licensing schemes of various other occupational groups, such as real estate agents, settlement agents, land valuers, debt collectors and employment agents, are set out in industry specific legislation but are based on the authority of the Commissioner as provided for in section 57A of the FTA. This section gives the Commissioner various licensing and regulatory functions, such as to administer licensing, registration and certification schemes, to conduct and promote education, and to provide advisory services.

3 AUCTION SECTOR IN WA

3.1 Profile of the auction industry in WA

The auction industry in WA is diverse and has a range of sectors in which auctioneers operate, with some operating across industries while others tend to specialise in specific areas such as real estate, motor vehicles, agriculture (including livestock, wool, grain, seafood and wine), plant and machinery, fine art, jewellery, antiques and collectables, home wares, furniture, and general goods.

Auction businesses in WA can range from small one person operations and medium sized family businesses to large companies that have multiple branches in each Australian state and territory. Access to online trading has meant that auction businesses are now more readily open to competition from other entities conducting the same activities outside of WA.

Auction businesses, like many other businesses in WA, are subject to the economic conditions of the day. The current economic conditions and reduced consumer activity has put added pressure on auction businesses in a competitive market. During the course of the review one local auction business ceased trading after suffering financial difficulties.¹⁷

3.2 Number of licensed auctioneers

The Magistrates Court, which currently licenses auctioneers, advised that as at 30 June 2018:

- 426 auctioneers were approved to hold a general licence;
- 30 auctioneers were issued with restricted licences;
- three occasional licences were issued;
- no interim or provisional licences were issued; and
- four applications for a licence were refused in the financial year to 30 June 2018.

3.3 Licence fees

Licence application and renewal fees are prescribed by regulation 3 of the Auction Sales Regulations 1974 and are set by the Magistrates Court on a cost recovery basis. The fees as at 1 July 2018 are listed in Table 3.

Table 3: Application and renewal fees as at 1 July 2018

Purpose	Fee
General or restricted licence for:	
1 year	\$187.95
2 years	\$375.90
3 years	\$563.85
Occasional licence	\$66.15 per licence
Interim or provisional licence	\$15.25 per month or part of a month

3.4 Complaints and enquiries

Table 4 below shows that the number of complaints made to Consumer Protection, since 2008, has been relatively low. In the period from 1 January 2008 to 30 June 2018, Consumer Protection received 505 complaints. Of these, 199 complaints (39 per cent) related to traditional auctions and 306 complaints (61 per cent) related to online auctions.

¹⁷ Consumer Protection announced the closure of Hayes Auctioneers on 29 March 2018 on its website: <https://www.commerce.wa.gov.au/announcements/auctioneer-closes-down-leaving-sellers-out-pocket-hayes-auctioneers>.

Table 4 - Complaints data - 2008 to 2018

Complaints	Number	Most frequent issues raised	Number
Traditional auctions	199 (39%)	Product faults Misrepresentation	31 (16%) 28 (14%)
Online auctions	306 (61%)	Product faults Delay in delivery and payment Misrepresentation	104 (34%) 56 (18%) 54 (18%)
Total	505		

Table 5 below shows that over the same ten year period, 2,992 enquiries were received. Of these, 1,599 enquiries (53 per cent) related to traditional auctions and 1,393 enquiries (47 per cent) related to online auctions.

The most frequent issues raised in complaints and enquiries about traditional and online auctions related to faulty goods, products being misrepresented, or not being as described, and delays in delivery and payments.

Table 5: Enquiry data - 2008 to 2018

Enquiries	Number	Most frequent issues raised	Number
Traditional auctions	1,599 (53%)	Product faults Misrepresentation	299 (19%) 203 (13%)
Online auctions	1,393 (47%)	Product faults Delay in delivery and payment Misrepresentation	270 (19%) 166 (12%) 205 (15%)
Total	2,992		

3.5 Key factors affecting the auction sector

As with many industries, access to online trading has likely had the most significant impact on the auction sales industry over the past decade. Such technology has provided increased competition and opportunities for business while providing greater accessibility for the purchase of goods for consumers.

However, as with many risks associated with online trading, it has also meant consumers and auction businesses being exposed to an increased risk of general unfair practices, mismanagement, potential exposure to fraud or loss of funds.

These and other factors which may influence the future regulation of the auction sector are outlined in further detail below.

3.5.1 Technology and online auctions

The future regulation of the auction sector needs to take into account the technological changes that have come about since the Auction Sales Act was first introduced in 1973. The internet has changed the way many businesses now conduct auctions and online auctions appear to be improving business practices. A submission from WA Farmers, for example, made reference to improvements achieved in agricultural auctions through the use of online auction platforms which are helping to resolve problems relating to lack of transparency, secondary agents in the marketplace, market distortions, and primary producers not receiving full value for the sale of their goods.

Alternatively, the technology has potential for goods to be misrepresented as people are not able to physically inspect the goods. Consumer Protection's complaints data in Table 4 shows that common complaints regarding online auctions include that the goods delivered were faulty and that auctioneers online made misrepresentations or failed to provide goods of the standard advertised.

Although the internet introduces global access to goods and services, it also potentially disadvantages local auctioneers and the ability of regulators to enforce the local law. Through the use of the internet, auctioneers are able to effectively operate in WA from anywhere in the world without being licensed, potentially creating an unfair advantage for them over locally based licensed auctioneers.

Overall, a recurrent theme in the submissions to the CRIS was the changing market to borderless online auctions. Respondents generally agreed that auctioneers who conduct auctions by online means continue to act as agents on behalf of their clients, and therefore the same conduct provisions that relate to traditional auctions should also apply to online auctions.

3.5.2 Australian Consumer Law

The future regulation of the auction sales industry needs to consider the provisions of the ACL which commenced in 2011. The ACL provides a broad range of consumer protections in addition to any that may exist under the Auction Sales Act. The general provisions of the ACL provide that a person or corporation shall not, in trade or commerce:

- accept payment for goods or services when there is an intention to not supply the goods or services or to supply goods or services materially different from those for which payment is accepted¹⁸;
- engage in misleading or deceptive conduct or conduct that is likely to mislead or deceive¹⁹;
- make false or misleading representations in connection with the supply of goods or services²⁰; or
- include unfair contract terms in their standard form consumer contracts.²¹

The ACL is currently limited in its application of consumer guarantees to goods bought at auction. Under the ACL, consumer guarantees require the seller to guarantee that:

- goods will be of acceptable quality, will be fit for a disclosed purpose, will match their description, and will match the sample or demonstration model;
- the manufacturer will ensure facilities for repair, and parts for the goods are reasonably available and will honour any express warranties;
- the buyer has title to the goods;
- the buyer has undisturbed possession of the goods; and
- there are no undisclosed securities on the goods.

Only consumer guarantees relating to title, undisturbed possession and undisclosed securities apply to goods purchased at an auction and only where an auction is conducted by an auctioneer who acts as an agent of the person selling the goods.

¹⁸ ACL section 36 (civil), section 158 (criminal).

¹⁹ ACL section 18.

²⁰ ACL section 29 (civil); section 151 (criminal).

²¹ ACL section 23(3).

The final report of the review of the ACL, published in March 2017, made a number of recommendations for reform, some of which, if implemented, would impact on the obligations of auctioneers. One recommendation was that the 'sale by auction' exemptions from the consumer guarantees should be 'modernised' to reflect the fact that many auctions are now conducted online, meaning that consumer guarantees should apply to goods bought through online auctions. The recommendation was based on the fact that in an online auction a consumer is unlikely to have the opportunity to properly inspect the goods in person in a way that is possible at a traditional auction at a physical location.

The meeting of Ministers at the Legislative and Governance Forum on Consumer Affairs (CAF) on 26 October 2018 agreed to maintain the current provisions in the ACL which exempt goods sold via auctions from consumer guarantees. The Ministers noted that New Zealand will be undertaking a review of the consumer law reforms that took effect between 2013 and 2015, including changes made to the consumer protections applying to auctions, and that there would be benefits in further considering this matter in light of the outcomes of this review.

3.5.3 Uneven playing field

The regulation of auctioneers varies considerably across Australia and creates an uneven playing field for industry participants. In many jurisdictions only certain types of auctioneers are licensed with the majority not being licensed at all. The lack of consistency in the regulation of auctioneers across Australia can impact negatively on businesses. A respondent from the motor vehicle industry sector stated that the mobility of auctioneers from state to state is hampered by the different licensing regimes in each jurisdiction and argued strongly for the non-licensing options (Option C or D) to facilitate national consistency in the regulation of auction sales and to support online auctions across Australia.

Businesses that operate nationally and conduct business to business dealings, such as those that deal with large scale plant and machinery, and those that auction seafood for restaurants, would also prefer the auction sales industry to be deregulated.

Enquiries to interstate regulators revealed that in other jurisdictions that limit licensing to key targeted sectors, such as real estate and motor vehicle sales, there are no plans to broaden the scope of licensing to other sectors.

Table 6 provides a summary of the current legislation in each jurisdiction.

Table 6: Summary of the regulation of auctioneers in Australia

Jurisdiction	Act	Regulation requirements
WA	<i>Auction Sales Act 1973</i>	Auctioneers are required to be licensed to auction all types of goods and property.
Qld	<i>Property Occupations Act 2014</i>	Auctioneers are required to be licensed to sell real property by auction; licensees are permitted to sell real property and other types of property by auction, but only if the property is connected to a real property auction (such as livestock as part of an auction for a farm house and rural land).
	<i>Motor Dealers and Chattel Auctioneers Act 2014</i>	Auctioneers are required to be licensed to auction cars, other motor vehicles, livestock, agricultural equipment, art, collectibles, and any other items.
NT	<i>Auctioneers Act</i> ²²	Auctioneers are required to be licensed to sell all types of goods and property by auction.
NSW	<i>Property Stock and Business Agents Act 2002</i>	This Act applies to auctions of land and livestock. Real estate agents and stock and station agents must be licensed and each licence is subject to the condition that the holder of the licence must not act as an auctioneer unless the licensee is accredited as an auctioneer under section 21 of the Act.
	<i>Motor Dealers and Repairers Act 2013</i>	Licensed motor vehicle dealers may sell motor vehicles by auction.
Vic	<i>Sale of Land Act 1962</i>	Estate agents and auctioneers must be accredited by the Business Licensing Authority. Both the Act and the Regulations apply to the sale of land by public auction.
	<i>Sale of Land (Public Auctions) Regulations 2014</i> <i>Motor Car Traders Act 1986</i>	A motor car trader must be licensed and may apply to the Business Licensing Authority for an endorsement to the licence authorising the holder to conduct sales of motor cars at public auction.
Tas	<i>Property Agents and Land Transactions Act 2016</i>	Auctioneers must be registered under this Act. General auctioneers must be named in Part 3(1) of the Register under the Act and real estate agents who conduct auctions must be named in Part (1) of the Register. sections 59 to 82 of the Act contain provisions for the conduct of auctions.
SA	<i>Land Agents Act 1994</i> <i>Land and Business (Sale and Conveyancing) Act 1994</i>	The <i>Land Agents Act 1994</i> requires that a registered agent or sales representative must be additionally registered as an auctioneer with the Commissioner to sell land or a business by auction. The <i>Land and Business (Sale and Conveyancing) Act 1994</i> contains specific conduct provisions pertaining to the auctioning of land and businesses.
ACT	<i>Civil Law (Sale of Residential Property) Act 2003</i>	An auctioneer (seller's agent) is not required to be licensed, accredited or registered. The Act contains conduct provisions pertaining to public auctions of residential property and penalties if the provisions are breached.

²² The *Auctioneers Act* as in force at 1 July 2016.

3.5.4 Dual regulation: real estate agents and motor vehicle dealers

The future regulation of the auction sector needs to recognise that WA's regulatory regime may currently over regulate certain occupational groups. For example, some real estate agents also conduct auctions and to do so they are required to be licensed under the REBA Act as well as the Auction Sales Act. Motor vehicle dealers are also required to be licensed under the MVD Act and the Auction Sales Act if they sell vehicles by auction. However, these occupational groups already undergo strict licensing assessment under their industry specific Acts. To be licensed they must satisfy "fit and proper" licensing criteria, prescribed entry qualifications, and comply with business conduct provisions, including detailed rules for the operation of trust accounts.

3.5.5 Financial failure of auction businesses

Financial failure is a risk in any industry and owners of auction businesses are not immune to such risk. A local example is the case of Hayes Auctioneers Pty Ltd, a well-known auction house with a long trading history. In March 2018, Hayes Auctioneers ceased operating after suffering financial difficulties. There were substantial losses to consumers which may have been avoided if the legislation had required trust accounts for consumer funds.

It has been reported that the liquidation of this local auction business has resulted in 166 people not being paid by the auctioneer for their consigned goods and that total debts amount to \$718,000. The likelihood of unsecured creditors receiving funds from the sale of their goods are slim because they are generally last in line to be paid after employee wages, taxes and secured creditors, such as mortgage holders, have been paid.

The liquidator in this case reported that the company only maintained one bank account, which was used to receive all proceeds collected from its auction sales and pay all of its operating expenditure. The liquidator noted that the Auction Sales Act does not require auctioneers to deposit auction proceeds into a separate trust account. The liquidator thought that the use of trust accounts for this purpose is standard practice and the company's approach was somewhat irregular and not best practice.²³

The Auction Sales Act currently requires licensees to account for money received on a vendor's behalf by separately recording any such money.²⁴ However, there is no requirement that the funds be held in a separate trust account to protect against misuse of auction sale proceeds, with auctioneers able to combine these proceeds with the general trading operating funds of the business.

This means that these funds are not quarantined from the assets of the auctioneer or the assets of the firm should it become insolvent. In the event of an auction business being liquidated, vendors may find it difficult to recover unpaid sale proceeds, as is the situation in the insolvency case described above.

This is not the case with real estate agents and motor vehicle dealers, both of whom are required to operate and maintain trust accounts to deposit monies related to real estate transactions, and in the case of motor vehicle dealers, deposit the proceeds from the sale of vehicles the dealer does not own and are being sold on consignment (whether at auction or by negotiated contract).

²³ Daniel Bredenkamp and Renee O'Driscoll *Liquidators' Report to Creditors Hayes Auctioneers Pty Ltd* 26 June 2018. The report is publicly available from the Australian Securities & Investments Commission (ASIC) at a fee of \$40.

²⁴ Auction Sales Act, section 26.

4 OBJECTIVES AND RATIONALE

4.1 Objectives of the Auction Sales Act

The principal objectives of the Auction Sales Act are to increase consumer confidence in the auction system, and protect buyers and sellers against specific unfair and anti-competitive conduct at auctions.

The Act seeks to achieve these objectives through licensing of auctioneers to ensure fit and proper persons operate in the industry and the prohibition of certain types of conduct.

4.2 Rationale for government intervention in the auction sector

As stated earlier the auction sector provides an important method of conducting transactions in a market economy. Auctions play a significant role in ascertaining the market price of goods and property and are seen to be the fairest way of establishing value and ensuring that parties are treated equitably.

Auctions are also often conducted in the process of settling various matters when the best value for property and goods must be obtained openly and fairly and in some instances, in a limited timeframe. Examples include deceased estates, mortgagee sales, and liquidation of assets of businesses in receivership. Auctions also play an important role in certain industries (e.g. agriculture, motor vehicles) for the purchase and sale of products and stock.

The honest and efficient operation of the auction industry is therefore critical in the performance of commerce and the economy as a whole.

5 LEGISLATIVE FRAMEWORK

5.1 Key aspects of the Auction Sales Act

Types of licences

The Auction Sales Act does not prescribe any specific training or qualifications that must be attained in order to apply for a licence. The majority of licensees obtain a general auctioneer's licence which entitles the person to conduct auctions for all types of goods.

The other types of licences are:²⁵

- a restricted licence, which limits the classes of business, parts of the state and/or times during which an auctioneer may carry on business;
- an interim licence, which may be granted to a person wishing to sell on the auctioneer's behalf if incapacity prevents an auctioneer from selling by auction;
- an occasional licence, which authorises a person to conduct auctions on a single occasion and may only be granted to an applicant five times in a year in the same locality; and
- a provisional licence, which authorises the licence holder to act as an auctioneer under the direct supervision and instruction of a licensed auctioneer. A provisional licence can only be granted for a period of two months and cannot be granted more than three times in a calendar year.

Prescribed classes of business for a restricted licence

For the purpose of a licence, other than a general licence, the class or classes of business that the regulations may prescribe are as follows²⁶:

- any interest in land;
- motor vehicles;
- wool;
- livestock;
- second hand articles; and
- any other specified commodity or thing.

All licences may be subject to such conditions, limitations or restrictions as the magistrate considers fit.²⁷

Requirements to obtain a licence

To be licensed, a person must:

- be 18 years of age and apply to their local Magistrates Court and be granted a licence by a magistrate;
- be a "fit and proper"²⁸ person and give evidence of this by providing three character testimonials;
- obtain a criminal history check from the WA Police Force to satisfy the magistrate that the applicant does not have serious convictions that would render a person unfit;
- apply individually as a "natural person"; and

²⁵ Auction Sales Act, section 7.

²⁶ The Auction Sales Act, section 10, contains a provision enabling businesses to be prescribed by regulation. Currently no businesses have been prescribed.

²⁷ Applications for a licence are currently lodged at a local Magistrates Court nearest to the place the applicant proposes to carry on business and heard by a magistrate (Auction Sales Act, sections 11 and 16).

²⁸ Convictions for assault, theft, fraud or dishonesty are the key matters which may be considered in determining whether a person is fit and proper.

- comply with certain conduct provisions that relate to advertising, misrepresentation, mock auctions, the keeping of records, the rendering of accounts to clients and bidding practices.

Suspension, cancellation or disqualification

A licence may be suspended, cancelled or disqualified by a magistrate on the request of the Commissioner of Police if the licensee:

- is guilty of improper conduct in relation to the carrying on of the business of an auctioneer;
- has been found guilty of any offence involving dishonest or fraudulent activity; or
- is guilty of any offence under the Auction Sales Act.²⁹

Exemptions

Certain sales by auction are exempt from the Auction Sales Act and therefore exempt from the requirement to be performed by a licensed auctioneer. These are auctions ordered or performed by certain government institutions, charitable, educational or church auctions, or auctions for which the Governor has granted an exemption status.³⁰

5.2 Recent amendments

Recent amendments were made to the Auction Sales Act through the *Licensing Provisions Amendment Act 2016* (the Amendment Act) which commenced on 1 July 2017. The Amendment Act reduced regulatory requirements:

- removing the requirement to provide two copies of each character testimonial to support the original character testimonials when applying for an auctioneer's licence;
- removing the requirement to publish a notice in a prescribed form in a newspaper;
- enabling a magistrate to award a general or restricted licence for a period that is not less than 12 months but no more than a prescribed period (a period of up to three years has been prescribed); and
- providing for general or restricted licences to be issued or renewed for a prescribed period (a period of up to three years has been prescribed).

²⁹ Auction Sales Act, section 22.

³⁰ The Auction Sales Act section 5(1), specifies the situations where exemptions are granted from complying with the Act. Section 5(2) enables the Governor to grant further exemptions by Order in Council. To date this provision has been used on only one occasion in 2007 (Government Gazette 13 March 2007) in relation to fundraising to enable non-profit bodies to be exempt from the requirement to use a licensed auctioneer if the sole purpose of the auction sale is to raise funds for the purposes of the non-profit body.

5.3 Current conduct provisions

The Auction Sales Act includes a number of conduct provisions relating to anti-competitive or unfair conduct that apply to auctioneers as follows:

- knowingly making 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 of manufacture, or origin of that lot or otherwise ³¹;
- failing to provide notification in the conditions of sale of any right to make a vendor bid ³²; and
- purchasing stock auctioned by them unless the vendor has previously consented in writing to the purchase.³³

In addition, the Auction Sales Act regulates the following practices to:

- prohibit people who are not licensed as an auctioneer from advertising themselves as an auctioneer ³⁴;
- prohibit auctioneers from conducting mock auctions³⁵;
- require auctioneers to keep records and accounts and allow their records to be inspected ³⁶;
- allow a seller to make a bid as long as the right to bid is notified in the conditions of sale ³⁷;
- require specific records to be kept in relation to the sale of livestock and the sale of liquor ³⁸; and
- prohibit the collusive practice of “lot splitting”.³⁹

5.4 Proposed additional conduct provisions

As mentioned earlier, the previous review of the Auction Sales Act recommended strengthening the conduct provisions. The recommendations were carried forward for comment in the CRIS released on 16 December 2016 and were supported by stakeholders who opted for Options A, B and C.⁴⁰ The conduct provisions do not apply to Option D as this option proposes deregulating industry specific legislation and relying on the general provisions of the ACL and the Sale of Goods Act.

5.5 Recommendations relating to conduct provisions

The conduct provisions recommended for inclusion as part of the reforms of the Auction Sales Act relate to the following areas:

³¹ Auction Sales Act, section 24.

³² Auction Sales Act, section 29.

³³ Auction Sales Act, section 30(5).

³⁴ Auction Sales Act, section 23.

³⁵ Section 25 of the Auction Sales Act prohibits mock auctions. A mock auction is an auction where goods are sold for less than the highest bid made by the purchaser or part of the purchase price is repaid or credited to the purchaser; the right to bid is restricted to persons who have bought or agreed to buy other goods; or any money or article is given away or offered as a gift in addition to the lot bought. Mock auctions are undesirable because the sales techniques employed may distort the value of the goods.

³⁶ Auction Sales Act, sections 26 to 28.

³⁷ Auction Sales Act, section 29.

³⁸ Auction Sales Act, sections 30 and 33.

³⁹ Lot splitting includes a variety of collusive practices, such as inducing others to abstain from bidding. Such practices result in reducing competition and lowering the price of goods sold at auction. Section 31 of the Auction Sales Act creates an offence for such practices.

⁴⁰ An outline of the issues relating to each of the conduct provisions is provided in part 3 of the CRIS which is available on Consumer Protection's website at www.dmirs.wa.gov.au/cp-consultations.

- vendor and dummy bidding;
- registration of bidders;
- collusion (lot splitting)⁴¹;
- charging a buyer's premium ⁴²;
- disclosure of sale or purchase by auctioneers;
- harassment and disruptive behaviour;
- standard conditions or rules of conduct;
- record keeping and reporting;
- holding vendor funds in a trust account; and
- conducting online auctions.

Vendor and dummy bidding

The recommendations in relation to vendor and dummy bidding are that:

- the Auction Sales Act be amended to prohibit dummy bidding and to prohibit vendor bidding except where the right to make vendor bids is expressly stated in the conditions of the auction and each and every vendor bid is disclosed as a vendor bid when it is made;
- industry associations develop voluntary codes of conduct which include the prohibition of dummy bidding and adequate disclosure of vendor bidding; and
- significant penalties be imposed for breach of dummy bidding and vendor bidding provisions.

Registration of bidders

Respondents to the CRIS generally agreed that registration of bidders is a practical matter which should be left to the discretion of auctioneers operating in particular industry sectors. There was general consensus amongst respondents that the registration of bidders assists the auctioneer in organising the auction and identifying and recording successful bidders for invoicing purposes. There was also general consensus that this is a practical process which does not need to be made mandatory. It appears that the majority of auctioneers who deal in high volume auction sales register bidders prior to the start of the auction.

Collusion

It is recommended that the prohibition against collusive practices, such as lot splitting, be extended to all auctions. Lot splitting is currently prohibited at auctions of livestock and farm produce. Section 31 of the Auction Sales Act creates an offence for a person to induce or attempt to induce others to abstain from bidding at auctions. This is to prevent collusion between bidders, which has the effect of reducing competition and prices for vendors. This offence is specific to auctions of livestock and farm produce but does not include wool auctions, which for historical reasons is currently exempt from this provision but will be included once the prohibition against collusive practices applies to all auctions.

Charging a buyer's premium

It is recommended that charging a buyer's premium not be prohibited and that disclosure of the buyer's premium to potential bidders be subject to mandatory disclosure requirements under the Auction Sales Act.

⁴¹ Lot splitting is a form of collusion in which bidders group together to abstain from bidding to reduce the price at which a property is sold.

⁴² A buyer's premium is a fee paid for service by the winning bidder. Rates can vary considerably and generally range from 10 to 30 per cent depending on the auction and types of items being sold. Caps or maximum rates may also apply to a buyer's premium – e.g. vehicle auctions.

Disclosure of sale or purchase by auctioneers

It is recommended that the Auction Sales Act be amended to include a requirement that an auctioneer clearly disclose if they are the vendor or bidder for goods sold at auction, and that the auctioneer be required to obtain the vendor's prior written consent if the auctioneer intends to bid for goods at auction.

Harassment and disruptive behaviour

It is recommended that the Auction Sales Act be amended to include provisions to prohibit disruptive behaviour, harassment or exertion of undue influence by any person (including vendors, purchasers, bidders, auctioneers and their agents) at auctions.

Standard conditions or rules of conduct

It is recommended that the Auction Sales Act be amended to include the power to prescribe standard auction conditions or rules. There would also be a requirement that these auction conditions be disclosed to bidders prior to auction.

Record keeping and inspection

In relation to the sale of second hand goods by auctioneers, it is recommended that the Auction Sales Act be amended to require:

- a record of all goods received and a description of the goods;
- the name, address and identification of vendors; and
- that all information held by auctioneers, in relation to the sale of second hand goods, be made available to police or other regulatory bodies on request.

Holding vendor funds in a trust account

It is recommended that auction businesses be required to hold the proceeds of an auction in a trust account and that these accounts be audited on an annual basis. Appropriate penalties for breaching trust account provisions also need to be included in the Auction Sales Act.

Conducting online auctions

It is recommended that provisions concerning the conduct of auctions also apply to all forms of auctions conducted in WA, including internet based auctions where appropriate. The provisions should apply to those persons carrying out an auction business using the internet, rather than simply those persons using a website, such as eBay, to sell their own property. It is also recommended that Consumer Protection continue to work in consultation with the relevant national authorities to determine the best form of regulation for online auctions.

6 ASSESSMENT OF OPTIONS AND IMPACT ANALYSIS

The CRIS contained four options to consider and comment on about the future regulation of the auction sales industry. Each of the options has been considered against the key objective which is to have a regulatory framework that is well targeted, proportionate to the risks to consumers and businesses, and responsive to the changing circumstances and needs of the auction industry.

The key points made by the respondents to the CRIS (as summarised in Appendix 9.2), as well as the potential benefits, disadvantages and the potential implementation costs of each option have been taken into account.

Consumer Protection received 42 submissions to the CRIS and 12 responses to a consumer survey. The level of support, gauged by the number of respondents who supported each option in the CRIS, is provided in table 7.

Table 7: Number of respondents who supported each option

Option		No.
Option A	Retain the status quo, that is, make no changes to the current licensing system and conduct provisions	8
Option B	Retain licensing and introduce additional conduct provisions	21
Option C	Introduce a negative licensing system. The <i>Auction Sales Act 1973</i> would be retained, but auctioneers would not require a licence to operate. The Auction Sales Act would continue to regulate the conduct of auctioneers and exclude unfit persons from the industry.	6
Option D	Deregulate the auction sales industry and repeal the Auction Sales Act leaving the <i>Australian Consumer Law (ACL)</i> and the <i>Sale of Goods Act 1895</i> to apply to auction sales.	4
Option C or D	Qualified responses in two submissions supported both Options C and D.	2
No clear view	A view was not identifiable in the submission	1

Consumer survey responses

Nine of the twelve respondents to the consumer survey agreed that auctioneers should continue to be licensed and that there should be specific laws about the conduct of auctioneers (Options A and B). None of the respondents supported negative licensing (Option C). One respondent supported deregulating the auction sales industry (Option D). Two people did not provide a response in relation to their preferred option for regulation of the auction sales industry.

6.1 Option A – Retain the status quo

Option A retains the status quo in relation to the current level of regulation through the licensing of auctioneers and current conduct provisions in the Auction Sales Act. Option A serves as the base case for analysis of Options B, C and D.

Stakeholder views supporting Option A

Option A received support from auctioneers predominantly operating in the real estate industry. The eight supporters of Option A were reluctant to accept any major changes to the current system and firmly supported the current level of regulation of auctioneers. This group also welcomed the recent amendments to the Auction Sales Act which reduced red tape and introduced triennial licensing.

The supporters did not want additional government intervention. One respondent stated that most of the additional conduct provisions proposed, such as holding trust accounts, have already been met voluntarily in the auction industry. Another respondent suggested that auctioneers need clear guidelines rather than additional regulations.

This group also did not want their current status as licensed auctioneers to be eroded through negative licensing or deregulation. Most expressed concern that bringing real estate auctioneers under real estate legislation would lower the standard and quality of the auctioneer's licence. Within this group one real estate auctioneer stated that two distinct licences should remain, as real estate agents and sales representatives were not usually skilled auctioneers. Generally this group believed that the skills needed by an auctioneer required separate licensing to maintain high standards.

Stakeholder views not supporting Option A

Thirty three of the 42 respondents opposed Option A because they thought that some reform is necessary to improve the current regulatory regime, safeguard consumers, decrease the risk of consumer detriment and improve the status of auctioneers as a profession.

One respondent was opposed to Option A on the grounds that this option impedes the efficient and multi-jurisdictional operation of their licensees due to the company's national scope. The submission noted that the requirement for all individual auctioneers to hold a licence (Options A and B), as opposed to operating through an umbrella licence granted to the company, is problematic as the scale of the company's operations demands that auctioneers cannot be easily substituted in the case of unforeseen circumstances (e.g. illness, personal holidays, an emergency etc.). Options A and B require individual auctioneers to be licensed but this means that auctioneers from Victoria, New South Wales and South Australia are unable to step into roles in Western Australia, as they are not required to hold licences in those states. This respondent thought that Options C and D are more appropriate, and would bring Western Australia into line with other states that do not directly require auctioneers to hold a licence outside of particular industries.

REIWA, representing the real estate industry, supported Option D and opposed Option A for the following reasons:

- bidders at an auction for real estate are already protected by the requirements under the REBA Act;
- the costs of implementing the existing regulatory regime outweigh any benefits to consumers (both buyers and sellers) of real estate;
- real estate agents are also subject to the provisions of the ACL;
- the "fit and proper" test for an auctioneer's licence does not sufficiently test whether a person is truly fit and proper to enter the industry;
- the Auction Sales Act does not require any level of knowledge or minimum educational requirements for a person to conduct an auction; and

- the real estate industry is working on a national industry accreditation scheme which will require a high professional standard for real estate auctioneers.⁴³

Twelve individual real estate agents also did not support Option A but for different reasons from REIWA. The majority called for a licencing system which would require more stringent entry and conduct requirements. They also called for improvements in transparency, record keeping and disclosure, as well as requiring a cap on auctioneers' fees, introducing training requirements, prohibiting the entry of people of doubtful character and those that are not financially secure. One real estate auctioneer also recommended introducing a single uniform Australian licence.

Potential implementation costs

Option A retains the licensing of auctioneers under the Auction Sales Act. Based on the current licensing fee (\$563.85), with Consumer Protection as the regulator, fees would be charged on a cost recovery basis.⁴⁴ To meet government policy of full cost recovery Consumer Protection would need to incrementally increase fees by 61 per cent over time to \$1445.76 for a three year licence.

⁴³ REIWA stated that a national scheme will enable real estate and sales representatives to apply for accreditation on criteria that cover experience and skills. The scheme will require applicants to obtain ongoing additional professional development on top of the existing compulsory continuing professional development regime required under the REBA Act. The accreditation itself will be renewed every three years and will permit the consumer to identify practitioners who not only have obtained a level of knowledge relevant to auctioneering, but also a level of experience for auctions.

⁴⁴ Consumer Protection's cost recovery model apportions the costs of delivering its ongoing functions associated with regulating an industry (licensing, conciliation, compliance, enforcement, education and policy development). The costs in the CRIS were benchmarked against Consumer Protection's 2017/18 cost recovery model for the regulation of employment agents. The model assumed that there will be 420 licensed auctioneers paying a triennial fee of \$537 (as at 30 June 2017). The employment agents industry contains around the same number of licensees (426 as at 30 June 2018) and similar licensing provisions as in the Auction Sales Act. Cost recovery, based on the Magistrates Court's fees, is estimated to be only 39 per cent. The regulation of auctioneers by Consumer Protection under Option A would therefore require increases in licensing fees to improve the level of cost recovery. DMIRS was formed on 1 July 2017 and new funding models may apply in the future regulation of the auction sales industry.

Table 8: Option A: Potential implementation costs

Auctioneers	Licensing costs	Amount
	Licensing costs incurred by auctioneers: <ul style="list-style-type: none">to obtain and renew a general licence for three years⁴⁵; andto obtain a national police clearance certificate.	\$563.85 ⁴⁶ \$52.60
	Opportunity costs - lost income	
	Estimated opportunity costs of output forgone for one hour. ⁴⁷	\$200
Consumers	Cost of using a licensed auctioneer ⁴⁸	
	Seller's commission fee (10 to 25 per cent of sale price).	\$1,000 ⁴⁹
	Buyer's premium (10 to 30 per cent of purchase price).	\$1,000 ⁵⁰
Government	Transfer costs	
	Consumer Protection would incur once off transitional and start-up costs under Option A associated with transferring the records of licensed auctioneers from the Magistrates Court to Consumer Protection.	\$50,000
	Ongoing costs	
	Costs include the processing of licence applications and renewals, education, compliance, enforcement, policy and legislation development and management.	\$585,580
	State Administrative Tribunal (SAT) costs. ⁵¹	Nil

⁴⁵ Auction Sales Regulations 1974 clause 3 prescribes the fee for each type of licence.

⁴⁶ Incremental increases to \$1445.76 are required to achieve full cost recovery.

⁴⁷ Opportunity costs are the costs of output forgone where instead of processing licensing forms, photocopying, lodgement of applications and renewals, and travel, the auctioneer could have earned equivalent income by meeting with clients, conducting an auction or conducting other business activities that generate income.

⁴⁸ Seller's commissions and buyer's premiums generally apply and will vary depending on the item being sold. Additional administrative costs may also apply - e.g. for payment of purchases via credit card or a handling fee for the sale of consigned goods. Buyer's premiums may also include fees associated with internet or phone bidding, storage or late payments. An increase in licence fees charged to auctioneers by Consumer Protection may result in additional costs being passed on to consumers.

⁴⁹ This figure is based on a minimum 10 per cent commission on the sale price of \$10,000.

⁵⁰ This figure is based on a minimum 10 per cent buyer's premium on purchase price of \$10,000.

⁵¹ Given the historically low level of past cases, it is estimated that on average there would be one application to the SAT per annum to review licensing decisions and one application per annum for hearing disciplinary matters. Given this estimate, the SAT has advised that this work would be met within its existing resourcing.

Impact analysis

Table 9: Option A: Potential benefits and disadvantages

Potential benefits	Potential disadvantages
Industry	
<ul style="list-style-type: none"> Licensing is valued by some auctioneers in the industry. Option A would require minimal change for industry to adapt to. 	<ul style="list-style-type: none"> Continues to incur the cost of licensing and compliance with the Auction Sales Act. Increase in licensing fees with Consumer Protection as regulator.
Consumers	
<ul style="list-style-type: none"> Maintains consumer confidence through screening of participants to enter and operate in the industry. 	<ul style="list-style-type: none"> Existing conduct provisions do not adequately address certain unfair practices. Consumer funds may be at risk as there is no requirement for funds to be held in trust accounts.
Government	
<ul style="list-style-type: none"> Enables the regulator to know who is operating in the industry, to monitor their conduct, and to take enforcement and disciplinary actions. Full responsibility for the regulation of auctioneers transfers to Consumer Protection. A single regulator is more efficient for government. Funding stream through licensing fees is retained. 	<ul style="list-style-type: none"> Ongoing costs associated with administering full licensing and compliance functions.

Assessment against the objective

The continuation of the status quo under Option A is assessed as not achieving the objective and as having an overall negative impact, with the benefits being outweighed by the costs.

The current regulatory framework targets all types of auctioneers through licensing and only provides some conduct rules. Auctioneers would continue to incur the costs associated with licensing, including auctioneers operating in real estate and motor vehicles continuing to have to apply for an auctioneer's licence and a licence for their occupation.

With Consumer Protection taking over the licensing of auctioneers there would need to be an incremental increase in the licensing fees to achieve full cost recovery (a 61 per cent increase over time). This option results in significant cost increases for government and industry.

Financial risks through the mismanagement of buyers' or sellers' funds or from theft, fraud or other improper financial dealings would continue to apply as a result of funds not having to be held in a trust account.

In addition, the risk of general mismanagement of the auction process or unfair practices is not addressed as a result of additional conduct provisions not being introduced.

6.2 Option B – Retain licensing and introduce additional conduct provisions

Option B retains licensing and introduces additional conduct provisions relating to vendor and dummy bidding, registration of bidders, disclosure, record keeping, trust accounts, standard conditions of sale, collusive practices and online auctions.

Licensed real estate agents or registered sales representatives and licensed motor vehicle dealers would be exempt from having to also hold a licence under the Auction Sales Act as they are licensed under their respective industry legislation. However, when conducting an auction they would be required to comply with the conduct provisions under the Auction Sales Act.

Stakeholder views supporting Option B

Of the 42 respondents to the CRIS, 21 supported Option B. Twelve of these were individual auctioneers who specialise in conducting real estate auctions and are employed by real estate companies.

Respondents who supported Option B generally agreed that while this option would not entirely eliminate the risks, it would provide the most comprehensive regulatory regime to address the risks to consumers buying property and goods through the auction system.

ALPA and the WA Farmers, representing the agricultural sector in the auctioning of livestock and agricultural products, strongly supported retaining the licensing of auctioneers and introducing additional rules of conduct. The main reason for supporting Option B was that auctioneers should take responsibility for the sale of valuable assets which, if mishandled, could result in substantial monetary loss to their clients.

ALPA and the WA Farmers also argued that auctioneers should be assessed for their suitability to practice to ensure integrity, honesty, professionalism and to engender consumer confidence in the industry. This regulatory model is based on the premise that auctioneers act on behalf of their clients and have a fiduciary duty to their clients and are more likely to comply with auction sales laws if they are licensed.

These respondents thought that Option B would reduce the risk of loss arising from poor financial management, theft and misrepresentation. In addition, respondents supported the requirement for businesses to hold auction funds in trust accounts and for those accounts to be audited annually.

ALPA's strong support for Option B relates to the value of the agricultural sector which generates billions of dollars in agricultural production and the financial risks of placing this value in the care of unlicensed auctioneers. The spokesperson for this sector pointed out that the cattle and beef sector represents \$11 billion of agricultural production value and that it is important that the sector is competitive and efficient.

ALPA also referred to the recommendations of a March 2017 ACCC study of the cattle and beef industry that calls for the national licensing of livestock auctioneers.⁵² Recommendation 14 of the ACCC market study recommended:

- standardising the licensing of livestock agents, including those who auction livestock; and
- introducing a national licensing scheme in order to:
 - make it consistent across jurisdictions;
 - raise levels of compliance with the *Competition and Consumer Act 2010*;
 - raise levels of professionalism; and
 - address complaints the ACCC has received on matters, including collusive behaviour, fraud, improper financial dealings, and other undesirable practices.

⁵² The ACCC *Cattle and Beef Market Study Final Report* (March 2017) recommended standardised national licensing of livestock agents, professional buyers, and livestock auctioneers but recognised the difficulties in introducing national licensing schemes given previous attempts to do so (page 14).

Although the market study recommended a national licensing system for livestock agents, professional buyers and livestock auctioneers, it recognised that there had been unsuccessful attempts to implement this in the past, but nevertheless considered national licensing as an important improvement to make. In addition, the major issues in the market study focussed not so much on licensing but on making the cattle and beef sector more competitive and efficient, overcoming anti-competitive behaviour, misuse of buyer power, unfair distribution of profits in the supply chain, and inefficient market structures. The study also addressed concerns about consolidation in the processing sector, an alleged collective boycott by cattle buyers, and other issues that are risking and damaging transparency, competition and efficiency in this sector.

The WA Farmers submission also strongly supported the introduction of a standardised national licensing scheme for livestock agents and professional buyers to raise the levels of compliance and general professionalism within the industry. The submission made reference to the use of online auction systems in the industry, such as Auctions Plus, which has improved processes for the sale of land, machinery, chattels, agricultural produce and livestock. It has also helped to resolve problems relating to lack of transparency, secondary agents in the marketplace, market distortions and primary producers not receiving full value for the sale of their goods.

Stakeholder views not supporting Option B

Some stakeholders who did not support Option B did not want additional government intervention. One respondent stated that most of the additional conduct provisions proposed by Option B, such as holding trust accounts, have already been met voluntarily in the auction industry. Another suggested that auctioneers need clear guidelines rather than additional regulations. General feedback suggested that the proposed licensing requirements are unnecessary, overly burdensome relative to the protections they are intended to provide, and the costs outweigh the benefits.

A few respondents stated that the ACL and the Sale of Goods Act, combined with the strengthening of conduct provisions under the Auction Sales Act, would, as a non-licensing regulatory model, provide stronger protections and transparency for consumers and businesses than licensing, which creates an unnecessary level of additional regulation and cost.

One stakeholder stated Option B, which retains licensing, is unnecessary because businesses are very self-regulating. “Do the wrong thing by customers, buyers or sellers and they won’t deal with the firm again. Dodgy practitioners won’t get much repeat business and will have no choice but to close. Good firms thrive, others don’t.” This respondent also stated that banning dishonest persons from auctioneering is more effective than licensing auctioneers.

REIWA proposed that licensing of real estate auctioneers as a regulatory method of addressing market failures is no longer relevant and that consumers are more than adequately protected by the requirements on agents and sales representatives in the REBA Act and code of conduct, in addition to the REIWA industry auction code and the ACL.

Other respondents rejected the licensing options proposed by Option B on the grounds that deregulated systems work very well in New South Wales and other states.

Potential implementation costs

Option B retains the costs associated with licensing under the Auction Sales Act and proposes additional conduct provisions. Due to the proposal that licensed real estate agents and licensed motor vehicle dealers would be exempt from also having to hold an auctioneer's licence, the number of persons licensed under the Auction Sales Act would be reduced. It is estimated that approximately 100 auctioneers who operate in the real estate industry and in the motor vehicle industry would be exempt from applying for an auctioneer's licence as they are already licensed under their respective industry legislation.

Costs would therefore be required to be recouped from a smaller number of licensees. Additional compliance costs would be incurred in monitoring and enforcing trust account requirements. When benchmarked against the cost of licensing employment agents, and against the costs of monitoring the trust accounts of real estate agents, settlement agents and motor vehicle dealers, cost recovery under this option is only 25 per cent.⁵³ To meet government policy of full cost recovery Consumer Protection would need to incrementally increase fees by at least 75 per cent over time to \$2255.40 for a three year licence.

Table 10: Option B: Potential implementation costs

Auctioneers	Licensing costs	Amount
	Licensing costs incurred by auctioneers:	
	• to obtain and renew a general licence for three years; and	\$563.85 ⁵⁴
	• to obtain a national police clearance certificate.	\$52.60
	Opportunity costs - lost income	
	Estimated opportunity costs of output forgone for one hour.	\$200
	Costs of annual audits	
	Estimated audit cost of trust accounts per annum per auctioneer.	\$2,000 ⁵⁵
Consumers	Cost of a using licensed auctioneer⁵⁶	
	Seller's commission fee (10 to 25 per cent of sale price).	\$1,000
	Buyer's premium (10 to 30 per cent of purchase price).	\$1,000
Government	Transfer costs	Amount
	Consumer Protection would incur once off transitional and start-up costs under Option B in transferring the records of licensed auctioneers from the Magistrates Court to Consumer Protection.	\$50,000
	Ongoing costs	
	Costs include the processing of licence applications and renewals, education, compliance, enforcement, policy and legislation development and management.	\$585,580
	Monitoring and enforcing trust account requirements over three years. ⁵⁷	\$98,600
	SAT cost.	Nil

⁵³ The percentage is calculated on 320 licensed auctioneers paying a triennial fee of \$537 (as at 30 June 2017).

⁵⁴ Incremental increases to \$2255.40 are required to achieve full cost recovery.

⁵⁵ Annual audit costs are estimated at \$200 per hour.

⁵⁶ Costs to consumers may increase due to increased industry costs being passed on to consumers.

⁵⁷ Costs are benchmarked against the costs of monitoring the trust accounts of real estate agents, settlement agents and motor vehicle dealers.

Impact analysis

Table 11: Option B: Potential benefits and disadvantages

Potential benefits	Potential disadvantages
Industry	
<ul style="list-style-type: none"> Licensing is valued by some in the industry. Reduced licensing costs for real estate agents operating as auctioneers and motor vehicle dealers operating as auctioneers. 	<ul style="list-style-type: none"> Increase in licensing fees with Consumer Protection as regulator. Due to the smaller field of licensed auctioneers, because of exemptions to real estate agents and motor vehicle dealers, and additional cost of monitoring compliance with trust account requirements, the cost will be greater than the increase under Option A. Increases in compliance costs associated with operating and maintaining trust accounts and other proposed conduct provisions.
Consumers	
<ul style="list-style-type: none"> Maintains consumer confidence through screening of participants to enter and operate in the marketplace. Reduces the risk of consumer detriment occurring through increased conduct provisions. Provides financial and audit controls and standards of management which reduce the risk of misappropriation or mismanagement of funds held in trust. 	<ul style="list-style-type: none"> Consumers may incur higher auctioneers' fees as auctioneers are likely to pass on the increased compliance costs to buyers and sellers.
Government	
<ul style="list-style-type: none"> Enables the regulator to know who is operating in the industry, to monitor their behaviour and to take enforcement and disciplinary actions. Full responsibility for the regulation of auctioneers transfers to Consumer Protection. Funding stream through licensing fees is retained. 	<ul style="list-style-type: none"> Ongoing costs to administer the licensing scheme. Increases compliance costs associated with monitoring, investigating and enforcing expanded conduct provisions.

Assessment against the objective

The implementation of Option B is assessed as achieving the objective but as having a significant negative impact, with the benefits being outweighed by the costs. The proposed regulatory model retains licensing of auctioneers, introduces additional conduct provisions and strengthens the regulatory framework. General auctioneers would incur higher licensing fees due to reduced numbers because real estate auctioneers and motor vehicle auctioneers would not have to apply for an auctioneer's licence. All auctioneers would incur higher compliance costs associated with the introduction of additional conduct provisions.

Financial risks through the mismanagement of buyers and sellers funds and through theft, fraud or other improper financial dealings are reduced by funds having to be held in a trust account. The risk of general mismanagement of the auction process or unfair practices is reduced by the introduction of additional conduct provisions. Government would continue to incur the costs associated with regulating the industry. These costs would increase if full cost recovery is not achieved.

6.3 Option C – Introduce a negative licensing system

Option C would see the introduction of a negative licensing system and the additional proposed conduct provisions. A person would not be required to obtain a licence to operate as an auctioneer. While the regulator would no longer licence auctioneers, it would continue to investigate any allegations of misconduct by agents and take action against those who breach provisions of the Auction Sales Act. There would be a mechanism within the Act to suspend or remove auctioneers from the industry for serious breaches of conduct.

Stakeholder views supporting Option C

Six respondents supported Option C. In addition, two respondents stated that they would support either Options C or D.

The AVAA supported Option C on behalf of their 11 WA members and maintained that the current licencing requirements are overly burdensome relative to the protections they are intended to provide. While opposed to complete deregulation of the industry, the AVAA operates its own code of conduct to maintain ethical and professional standards specific to auctioneers, including a requirement for members to maintain audited trust accounts. The AVAA noted that the code supports the integrity of the auction profession to maintain the confidence of the general public and vendors who rely on auctioneers to assist them with the sale of their property. It emphasised that in order to maintain the confidence of the public, it is essential that conduct provisions are able to be imposed on auctioneers. Hence The AVAA firmly supports Option C.

The AVAA also expressed the view that provisions in the ACL and other legislation, such as the REBA Act and the MVD Act, combined with the proposed conduct provisions under the Auction Sales Act, provide stronger protections for consumers than licencing regulations, making the current licencing regime an unnecessary level of additional regulation and cost.

Manheim, a national motor vehicle company, supported Option C on the grounds that it would bring WA into line with other jurisdictions that do not directly require auctioneers to hold a licence outside of their particular industries. Option C would also support the efficient and multi-jurisdictional operation of motor vehicle auctions conducted by the company.

Stakeholder views not supporting Option C

Stakeholders opposed to Option C stated that it would provide insufficient regulation of the auction sales industry and the current status of licensed auctioneers would be eroded through negative licensing. Stakeholders also stated that Option C does not assess auctioneers for their suitability to practice, does not recognise that the financial risks are too great for the auction profession to be placed in the care of unlicensed auctioneers, and does not produce any consumer benefits.

REIWA also opposed Option C but for different reasons. As a supporter of deregulation REIWA believes that Option C does not appear to have any relevance to real estate auctions as an agent's conduct is already regulated under the REBA Act and the industry code of conduct. REIWA noted that an advantage of Option C appears to be that the regulator could remove auctioneers from the industry for serious breaches of misconduct. In practice, however, REIWA is not aware of any auctioneer who has had their licence terminated in the past.

Potential implementation costs

Table 12: Option C: Potential implementation costs

Auctioneers	Costs of annual audits	Amount
	Estimated cost of auditing and maintaining trust accounts.	\$2,000
Consumers	Cost of using an auctioneer⁵⁸	
	Seller's commission fee (10 to 25 per cent of sale price).	\$1,000
	Buyer's premium (10 to 30 per cent of purchase price).	\$1,000
Government	Compliance and enforcement costs	
	Ongoing costs would be incurred by government for: <ul style="list-style-type: none"> • compliance, enforcement, advice and education; and • monitoring and enforcing trust account requirement. 	\$151,420 per annum \$32,870 per annum
	SAT costs	
	SAT has advised that the cost to the tribunal for hearing disciplinary matters is likely to be met within existing resources.	Nil

Impact analysis

Table 13: Option C: Potential benefits and disadvantages

Potential benefits	Potential disadvantages
Industry	
<ul style="list-style-type: none"> • Lowers the costs for auctioneers who would no longer be required to pay licensing fees. • Removes barriers to entry into the industry. 	<ul style="list-style-type: none"> • Increases the risk of industry detriment through loss of reputation as unsuitable persons may enter the industry.
Consumers	
<ul style="list-style-type: none"> • Increases choice through competition as more auctioneers may enter the marketplace. • Reduced costs for auctioneers may be passed on to consumers. • Unsuitable persons can be removed from the industry. 	<ul style="list-style-type: none"> • Risk of consumer detriment until unsuitable persons are removed from the industry.
Government	
<ul style="list-style-type: none"> • Reduced costs by not having to administer the licensing system. 	<ul style="list-style-type: none"> • Ongoing compliance costs associated with the administration of the Auction Sales Act without cost recovery through payment of licensing fees.

⁵⁸ Costs to consumers may decrease due to reduced industry costs.

Assessment against the objective

The implementation of Option C is assessed as achieving the objective and as having minimal negative impact, with the benefits outweighing the costs.

New South Wales, Victoria, Tasmania, South Australia and the ACT have had similar experiences in deciding not to license auctioneers or to only license real estate and motor vehicle auctioneers whose operations have the greatest impact on consumers.

Western Australia, Northern Territory and Queensland are the only jurisdictions that require auctioneers to be licenced to auction all types of goods and property.

Option C achieves the objective for reform through the enforcement of specifically targeted conduct provisions which apply to both traditional and online auctions. For example, Option C specifically addresses the risks of financial mismanagement, misappropriation of funds and theft through provisions that require auctioneers to hold trust accounts.

The additional conduct provisions reduce the risk of general mismanagement of the auction process by requiring auctioneers to provide proper advice on the value of the goods, refrain from under quoting the market price of a property to induce buyers, provide advice on a realistic reserve price, properly conduct the bidding process and not allow dummy bids, collusive behaviour and other dishonest and unfair practices.

Importantly Option C provides for auctioneers who breach or fail to comply with the Auction Sales Act to be sanctioned and excluded from operating in the industry. Option C will also include appropriate penalties for misconduct without the requirement for licensing.

Option C results in a higher level of enforcement costs to government than in Options A and B as there is no cost recovery from the charging of licence fees, however, the model provides lower costs to industry which in turn may be passed on and result in savings to consumers.

6.4 Option D – Repeal the Auction Sales Act

Option D would repeal the Auction Sales Act and a person wishing to act as an auctioneer would not be subject to any industry specific legislation to operate. The current provisions of the Sale of Goods Act and the protections of the ACL would continue to apply to auction sales.

Stakeholder views supporting Option D

Option D was the least supported option with only four of the 42 respondents supporting this option outright. A respondent from the plant and machinery industry supported Option D and stated that in that industry sector there has been no consumer detriment in New South Wales where auctions in the plant and machinery sector are not regulated and yet New South Wales holds a much larger share of the Australian market for plant and machinery than WA.⁵⁹

REIWA also supported repealing the Auction Sales Act and relying on the REBA Act and industry self-regulation for the regulation of real estate auctioneers in WA. REIWA did not see any consumer benefit in the Auction Sales Act and believes that the costs associated with the administration of the licensing process exceed the benefits of this regulatory regime. REIWA maintained that licensed real estate agents who are also auctioneers are already subject to a strict regulatory regime under the REBA Act. REIWA's members are also required to comply with a voluntary auctioneer code of conduct.

REIWA also advised that an industry-led national accreditation scheme was being developed to enable real estate agents and sales representatives to apply for accreditation as auctioneers. Under this scheme, a series of criteria would cover experience and skills. The scheme would require applicants to obtain ongoing additional professional development on top of training required under the REBA Act. The accreditation itself would be renewed every three years and supporting documentation, showing the additional learning would need to be provided in order to maintain the status. An industry accreditation system would permit the consumer to identify practitioners who not only have obtained a level of knowledge relevant to auctioneering, but also a level of experience for conducting auctions. REIWA stated that education and experience are two issues that the current regulatory regime lacks and that a national accreditation system, which is currently being developed, will overcome these shortcomings.

Stakeholder views not supporting Option D

Stakeholders opposing Option D noted that the regulatory model relies solely on the ACL (and the Sale of Goods Act) for the protection of consumers. Stakeholders believed that in the absence of legislation containing conduct provisions relating specifically to the operations of auctioneers, the number of complaints regarding auctioneers would increase. They also feared that the risk of consumer detriment would increase through poorly conducted auctions and financial mismanagement and hence costs to consumers would increase. A strong opponent of this option stated that “a complete free-for-all would see the auction system stripped of integrity”. Stakeholders generally believed that if there were no specific rules and guidelines consumers would have no confidence that the auction system would operate fairly.

⁵⁹ Although the auctioning of plant and machinery is not regulated in NSW, the auction sales industry is not completely deregulated in NSW. Real estate agents, stock agents, and motor vehicle dealers must be licensed and accredited to operate as auctioneers. Auctioneers of general goods have never been required to hold a licence.

Potential implementation costs

Table 14: Option D: potential implementation costs

Auctioneers	Regulatory costs	Amount
	Auctioneers would no longer be required to pay licensing fees. There would also be no costs associated with meeting statutory conduct requirements relating to sale by auction.	Nil
Consumers	Costs of using an auctioneer⁶⁰	
	Seller's commission fee (10 to 25 per cent of sale price).	\$1,000
	Buyer's premium (10 to 30 per cent of purchase price).	\$1,000
Government	Compliance and enforcement costs	
	In a deregulated model, government would not bear the costs of licensing auctioneers, operating proactive compliance programs to monitor specific conduct provisions, or enforcing specific conduct provisions as in Options A, B and C. Costs continue to apply for the enforcement of general provisions under the ACL and the Sale of Goods Act.	Nil 50 complaints and one or two investigations per year based on historical data. ⁶¹

Impact analysis

Table 15: Option D: Potential benefits and disadvantages

Potential benefits	Potential disadvantages
Industry	
<ul style="list-style-type: none"> • Lowers the costs for auctioneers who would no longer be required to pay licensing fees. • Removes barriers to entry into the industry. • Reduces compliance costs for auctioneers associated with meeting statutory conduct requirements relating to sale by auction, such as mandatory recordkeeping, disclosure requirements and holding trust accounts. 	<ul style="list-style-type: none"> • Increases the risk of industry detriment, through loss of reputation as unsuitable persons may enter the industry. • Standards of conduct may decline.
Consumers	
<ul style="list-style-type: none"> • Increases choice through competition as more auctioneers may enter the marketplace. • Reduced costs may be passed on to consumers. 	<ul style="list-style-type: none"> • Increases the risk of consumer detriment through unfit persons operating in the industry. • Increased competition that lowers costs can result in reduced service and standards.
Government	
<ul style="list-style-type: none"> • Reduced costs due to not having to administer the licensing system. 	<ul style="list-style-type: none"> • Increased compliance costs associated with the administration of the ACL and the Sale of Goods Act without cost recovery through licence fees. • Expect more complaints with deregulation.

⁶⁰ Costs to consumers may decrease due to reduced industry costs.

⁶¹ It is possible that the number of complaints may increase with deregulation.

Assessment against the objective

The implementation of Option D is assessed as not achieving the objective and as having a significant negative impact with the benefits being outweighed by the costs.

Option D achieves the objective for reform through enforcement of general provisions under the ACL and the Sale of Goods Act, however it does not target the specific general and financial risks to consumers of engaging in the auction process or the ability to remove an unsuitable person from the industry.

The regulatory model proposed by Option D does not contain specific provisions targeted at the conduct of auctioneers or the financial risks that could arise in the auction process.

This regulatory model removes the burden on business in complying with licensing requirements but may result in consumer detriment by unsuitable persons operating in the auction sales industry and/or standards of conduct declining.

In addition, although there are lower costs to industry, there are higher levels of costs to government as there is no cost recovery from the charging of licence fees to cover enforcement activities.

7 PREFERRED OPTION

Recommendation: It is recommended that Option C be implemented.

Option C would see the creation of a negative licensing system whereby the Auction Sales Act would be retained and would contain current and additional conduct provisions that an auctioneer would be required to comply with. A person would not be required to obtain a licence to operate as an auctioneer.

While the regulator would no longer licence auctioneers, it would continue to investigate any allegations of unjust conduct by auctioneers and take action against those who breach the relevant conduct standards. There would be a mechanism within the Auction Sales Act to suspend or remove auctioneers from operating in the industry for serious breaches of conduct.

The regulatory approach proposed by Option C overall provides benefits that outweigh the disadvantages and achieves the policy objectives of the review.

It is therefore recommended that:

- Option C be implemented as the regulatory scheme for the auction sales industry in WA;
- all processes for the regulation of auctioneers should transfer from the Magistrates Court (within the Department of Justice) to Consumer Protection; and
- real estate agents and motor vehicle dealers, who are licensed under their industry specific legislation (REBA Act and MVD Act respectively) and who operate as real estate and motor vehicle auctioneers, also comply with the conduct provisions under the Auction Sales Act.

Livestock agents, professional buyers and auctioneers of livestock and auctioneers of wool and grains

Strong support for the strengthening of conduct provisions within the Auction Sales Act came from associations representing auctioneers operating in the livestock and farming sectors, for example the auctioning of livestock, wool, grains and rural property.

The concerns raised in the March 2017 report of the ACCC in its market study of the cattle and beef industry in Australia can adequately be addressed by Option C. There is substantial value in this industry in WA, so it is important that the conduct provisions within the Auction Sales Act be strengthened to address the problems encountered as found by the ACCC.

8 IMPLEMENTATION AND EVALUATION STRATEGY

8.1 Implementation

Implementation of the preferred option (Option C) requires amendments to legislation, principally the Auction Sales Act, with other changes to be implemented through amendments to the Auction Sales Regulations.

Transitional issues arising from the implementation of Option C, including the reimbursement of licence fees paid prior to the cessation of licensing and an appropriate lead in time to allow for education and compliance with new proposed new conduct provisions, will be determined in consultation with industry stakeholders.

Option C would also require a community education campaign prior to the commencement of the legislation to inform key stakeholders about the amendments. Key stakeholders include auctioneers, real estate agents and sales representatives, motor vehicle dealers and the general public.

Some possible initiatives could include:

- a community education campaign to advise of the amendments;
- revised and updated information about buying and selling at auction on Consumer Protection's website; and
- media releases, articles in the print and social media and radio interviews.

8.2 Evaluation

The effectiveness and impact of proposed changes will be monitored and a post implementation review will be undertaken at the Minister's discretion. Consumer Protection will monitor complaints and enquiries in relation to the implementation of the changes proposed in this paper. This information and feedback from stakeholders will be used to identify any issues in the sector that may necessitate further review or reviews.

The review of the effectiveness of the legislation following its introduction will have particular regard to:

- the extent, if any, of the problems that have occurred since the introduction of the changes and their impact on consumers, industry and government in terms of cost and how these problems might have been avoided;
- any changes in the nature and level of disputes that need to be referred to the SAT for mediation/arbitration; and
- the views of industry participants, consumers and other government agencies as to the effectiveness of the new regulatory scheme.

In addition, the Consumer Advisory Committee, the Property Industry Advisory Committee, and the Motor Vehicle Industry Advisory Committee (advisory committees appointed by the Minister) will play an important role in providing feedback in relation to the reforms from both a consumer and industry perspective. These committees meet regularly and have scope to provide input to Consumer Protection's evaluation of the reforms against objectives.

Consumer Protection will also consult with key stakeholders, relevant government agencies and industry associations.

9 APPENDICES

9.1 Overview of submissions

Options								
A – Retain the status quo B – Retain licensing and introduce additional conduct provisions C – Introduce a negative licensing system D – Deregulate, repeal the Action Sales Act and rely on the provisions of the Australian Consumer Law and the Sale of Goods Act								
Stakeholders	Option A		Option B		Option C		Option D	
Real estate ⁶² 18 submissions	Supported	4	Supported	12	Supported	1	Supported	1
	Qualified support	0	Qualified support	0	Qualified support	0	Qualified support	0
	Not supported	14	Not supported	6	Not supported	17	Not supported	17
	No clear view	0	No clear view	0	No clear view	0	No clear view	0
Motor vehicles 3 submissions	Supported	1	Supported	1	Supported	0	Supported	0
	Qualified support	0	Qualified support	0	Qualified support	1	Qualified support	1
	Not supported	2	Not supported	1	Not supported	3	Not supported	2
	No clear view	0	No clear view	0	No clear view	0	No clear view	0
Plant and machinery 2 submission	Supported	0	Supported	1	Supported	0	Supported	1
	Qualified support	0	Qualified support	0	Qualified support	0	Qualified support	0
	Not supported	2	Not supported	1	Not supported	2	Not supported	1
	No clear view	0	No clear view	0	No clear view	0	No clear view	0
Sea food 1 submission	Supported	0	Supported	0	Supported	1	Supported	0
	Qualified support	0	Qualified support	0	Qualified support	0	Qualified support	0
	Not supported	1	Not supported	1	Not supported	0	Not supported	1
	No clear view	0	No clear view	0	No clear view	0	No clear view	0
General auctions 5 submissions	Supported	1	Supported	2	Supported	1	Supported	1
	Qualified support	0	Qualified support	0	Qualified support	0	Qualified support	0
	Not supported	4	Not supported	3	Not supported	4	Not supported	4
	No clear view	0	No clear view	0	No clear view	0	No clear view	0
Fine Art, antiques and collectables 3 submissions	Supported	2	Supported	0	Supported	0	Supported	0
	Qualified support	0	Qualified support	0	Qualified support	1	Qualified support	1
	Not supported	1	Not supported	3	Not supported	2	Not supported	2
	No clear view	0	No clear view	0	No clear view	0	No clear view	0

⁶² The majority of submissions (mainly from real estate auctioneers) expressed a preference for Option B. Qualified support has been recorded against two submissions that supported more than one possible option, that is either Option C or D. In instances where a view was not identifiable, the response has been recorded as “no clear view”.

Options								
A – Retain the status quo								
B – Retain licensing and introduce additional conduct provisions								
C – Introduce a negative licensing system								
D – Deregulate, repeal the Action Sales Act and rely on the provisions of the Australian Consumer Law and the Sale of Goods Act								
Stakeholders	Option A		Option B		Option C		Option D	
Associations 4 submissions	Supported	0	Supported	2	Supported	1	Supported	1
	Qualified support	0	Qualified support	0	Qualified support	0	Qualified support	0
	Not supported	4	Not supported	2	Not supported	3	Not supported	3
	No clear view	0	No clear view	0	No clear view	0	No clear view	0
Consumers 3 submissions	Supported	0	Supported	3	Supported	0	Supported	0
	Qualified support	0	Qualified support	0	Qualified support	0	Qualified support	0
	Not supported	3	Not supported	0	Not supported	3	Not supported	3
	No clear view	0	No clear view	0	No clear view	0	No clear view	0
Government 3 submissions	Supported	0	Supported	0	Supported	2	Supported	0
	Qualified support	0	Qualified support	0	Qualified support	0	Qualified support	0
	Not supported	2	Not supported	2	Not supported	0	Not supported	2
	No clear view	1	No clear view	1	No clear view	1	No clear view	1
Total: 42 Submissions	Supported	8	Supported	21	Supported	6	Supported	4
	Qualified support	0	Qualified support	0	Qualified support	2	Qualified support	2
	Not supported	33	Not supported	20	Not supported	33	Not supported	35
	No clear view	1	No clear view	1	No clear view	1	No clear view	1

9.2 Stakeholder views – key points

Real estate	Options ⁶³			Key points
James Douglas ⁶⁴ LJ Hooker		B		<p>The licensing system should be improved although major changes are not required. The cost of changes would be acceptable as real estate agents do not conduct many auctions in WA.</p> <p>Improve the bidding process by requiring auctioneers to accept all bids including those that start much lower than what the auctioneer considers acceptable; the lowest bidder may be willing to increase his/her bid to an acceptable one.</p> <p>Make the auction process more transparent by increasing compliance to ensure that all paperwork is on display for the entire length of the auction; the public must have the right to view all documents pertaining to the listing being auctioned.</p> <p>Cap the fees of real estate auctioneers; currently the fees are decided on by the auctioneer on the day and are generally linked to the property reserve price. Increase licensing criteria for real estate auctioneers by:</p> <ul style="list-style-type: none"> • requiring auctioneers to have at least five years in the real estate industry and preferably be a licensed real estate agent with no convictions or fines before applying for a general licence; current training is inadequate - it is only a day's training with no exams attached and only attendance to pass; experience and knowledge should be a major consideration; • tightening up on those of doubtful character and not financial; • requiring the name, contact numbers and current licence number of the auctioneer to be shown in all advertising; the public needs to be assured that the auctioneer is a bona fide auctioneer with a current licence; and • introducing a single uniform Australian licence.
Wayne Chorley Colliers International	A			<p>Develop a more efficient renewal system; the current renewal system is far too long and takes up to three months to be finalised. Require that a body other than the Magistrates Court handle renewals in a timely fashion.</p>
Mark Murray Stocker Preston	A			<p>Does not support an over complicated/over regulated system; the Act should remain with minor changes. Avoid over regulation; for example, do not require a local cricket club annual auction to have a trust account. The real estate industry self regulates trust accounts, dummy bidding, disclosure and auctioneer conduct.</p> <p>These issues should be left to auctioneers as they are upstanding people and conduct themselves fairly in their particular auction environment. One licence is sufficient (with conditions if needed) and a three year term before a simple renewal. The first application must require proof of identity (e.g. a 100 points check).</p>

⁶³ Options:

A – Retain the status quo.

B – Retain licensing and introduce additional conduct provisions.

C – Introduce a negative licensing system.

D – Deregulate, repeal the *Auction Sales Act* and rely on the provisions of the ACL and the Sale of Goods Act.

⁶⁴ The full text of all submissions is available on Consumer Protection's website at <http://www.commerce.wa.gov.au/consumer-protection/consumer-protection-public-consultations>.

Real Estate	Options			Key points
Cameron Wilson Professionals	A			In regards to real estate auctions, does not see the need to change any aspects. Vendor bids are still very much needed to keep momentum. Would be beneficial to introduce compulsory registration of bidders, similar to registration in NSW; registration would stamp out any potential phantom/dummy bidding and would also help vendors make a decision on reserve price etc., prior to the auction commencing.
Joe White JMW Real Estate			D	Apply general conduct provisions of the ACL in relation to prohibiting deceptive conduct. The provisions in the ACL banning deceptive conduct are far more of a deterrent than what exists in the existing Act. The market will select the best people more effectively than a licensing system.
Geoff Potter Capital APM		B		All bidders prior to auction should be registered by the agent / auctioneer and required to provide their name, address and contact details. This would result in more honesty when the agent knows at any time that their list can be scrutinised. The public should be made aware of this prior to the auction commencing.
Bill Goddard Goddard and Goddard		B		Raised issues about the lack of renewal notices and the lengthy three month period for renewal of licences. Supports triennial licensing and the transfer of licensing to Consumer Protection as it has expertise in this area. Does not support negative licensing.
Christian Smith Century 21		B		Auctioneer actions and conduct should be beyond reproach and auctioneers must act in a far superior manner compared to a real estate sales representative. Auctioneers must be open, honest and transparent. General auctioneers can sign contracts for sellers and make quick and fast decisions on the spot. They need to operate at a higher level as professionals and also be seen to have unquestionable integrity.
Gary Jones Murdoch Jones Realty		B		All auctioneers should be a member of REIWA and be licensed and therefore regulated, trained, and updated on changing laws. All auctioneers should uphold a code of ethics and be held to account.
Rob Mason Professionals Albany		B		Licensing does not achieve much in terms of maintaining standards or integrity. Industry bodies such as REIWA are better placed to do this through training and adherence to their Auction Code of Conduct. The risk of removing all licensing requirements is that it becomes a "free for all". With regard to real estate auctions only qualified real estate agents and registered sales representatives should be able to conduct auctions for real property.
Christopher Fryson Professionals Kalgoorlie		B		To keep the costs and bureaucratic process to a minimum, and as there has never been a qualification requirement to become a licensed general auctioneer, all triennial certificates and land salesperson's registration certificates, which are renewable every three years, be amended to include general auctioneer as part of their permitted activity. If done this way there are no cost implications.
Tim Slattery Slattery Auctions WA			C	Endorses the position of the AVAA for a negative licensing scheme to be introduced and supports changes proposed. The position of the AVAA offers a fair and balanced response to the issues raised in the review.

Real Estate	Options			Key points
Mitch Watt The Agency		B		<p>It would be wrong to have anyone who wishes to simply become an auctioneer to do so. This has been a flaw in the current system. The person applying must be able to demonstrate a thorough knowledge of the auction process as a whole. For example, the applicant must have been in the industry for two years and produce evidence that they personally have listed a minimum of 10 auctions in that time.</p> <p>REIWA's position on this will be that a licensed agent could be an auctioneer by default – plenty of licensees and principals do not have the first clue about the auction process. In essence – there needs to be a professional standard/delineation for auctioneers.</p>
Ryan Thompson Auction Services WA		B		<p>The licensing process is an important part of protecting the industry and those auctioneers serving in the industry. Licensing is only one part of the equation. Need stricter regulations around the educating and training of auctioneers coming into the industry.</p> <p>Auctioneers have a responsibility and a duty of care towards clients. They entrust their most valuable assets to auctioneers. It is therefore important that auctioneers, together with real estate agents, ensure that should a seller decide to use an auction as a method of sale that the process is such that it protects their asset and offers a fair and transparent environment for both seller and buyer.</p>
Jeff Wright Wright Real Estate		B		<p>Supports the following proposals:</p> <ul style="list-style-type: none"> • three year automated renewals sent to the auctioneer; • remove requirement for lodgement in a newspaper; • references required should be maximum; • renewal form must be rewritten in clear English grammar, current form is totally illogical and antiquate; • dummy bidding should remain outlawed; • all current disclosure rules should remain; • registration of bidders should be optional; • trust account rules should remain tight; and • online auctions to be tightly controlled and structured to ensure that total transparency and honesty prevails.
Rod Ryan Defreitas & Ryan Cockburn		B		<p>Auctioneers should continue to be licensed and should also be required to complete up-to-date CPD courses each year and attend compulsory workshops. This would ensure that this very public and highly sensitive area of industry be seen in a good light and receive transparent approval from the public. All auctions must be recorded so as to assist in resolving any issues or arguments that may arise.</p> <p>This is similar to what happens at the casino where they have the ability to play back and review any disputes that may arise during the cut and thrust of gambling.</p> <p>An auction as a centuries old sales method should be made a truly respected method of transferring property ownership via competitive bidding.</p> <p>Suggests that all the normal rules would apply to online auctions.</p> <p>Any form of auction must be seen as totally transparent and honest so as to give the public confidence in the process. An example of underquoting the market price of a property to attract bidders is the Melbourne Hocking Stuart case in 2016. Rogue auctioneers must be prevented from devaluing the practice of auctioneering.</p>

Real Estate	Options			Key points
Brian Jardine Kevin Green Real Estate	A			<p>If the auctioneer's licence was to be attached or included in the real estate agent's or real estate sales representative's licence then this would lower the standard and quality of the auctioneer's licence. If a person wishes to include auctions into their vocation roles then they should apply for an additional licence.</p> <p>With the auctioneer licence comes an additional responsibility to ensure that the auctioneer acts in the best interests of the client. Integrity and honesty are paramount in conducting the auction subject to the current legislation and REIWA's Code of Conduct. It is a very responsible position and one that should not be eroded by diminishing the process to obtain an auctioneer's licence.</p>
James Paxton Paxton Hoad		B		<p>Supports the following proposals :registration of bidders; disclosure of vendor bids and reduce the allowable number; wording change in contracts so that they state that at the fall of the hammer the registered bidder is legally bound; enable licence applications and renewals to be made online. The Magistrate Court process has been archaic for too long; all auctioneers should be licensed and have completed training to qualify.</p>
Motor vehicles	Options			Key points
Darren Birtles Manheim			C D	<p>Supports the introduction of the proposed conduct provisions. Due to Manheim's national scope throughout Australia, Options A and B impede the efficient and multi-jurisdictional operation of auctions. The current requirement for all individual auctioneers to hold a licence, as opposed to operating through an umbrella licence granted to Manheim Pty Ltd, is problematic as the scale of Manheim's operations demands that auctioneering resources cannot be easily substituted in the case of unforeseen circumstances (i.e. illness, personal holidays, an emergency etc.).</p> <p>Options C and D are more appropriate and would bring WA into line with other states that do not directly require auctioneers to hold a licence, outside of particular industries. Alternatively, if WA wishes to pursue auctioneer licensing, Manheim would consider a regime where a company could procure a licence that would then extend to all of its employees as an acceptable middle ground.</p> <p>In response to providing simulcast auctions to compliment traditional physical auctions, Manheim has developed specific terms and conditions for online bidding and sales.</p> <p>The proposal that industry associations develop voluntary codes of conduct and that the Act be amended to prescribe a mandatory code of conduct if required is a proposition that appears to be fraught with inconsistency in a vast industry that includes and covers a range of sectors (i.e. motor vehicles, homes, furniture etc.).</p> <p>Any mandatory codes of conduct would need consultation with industry to ensure it reflects best practice and provides consistency across the board. The online terms and conditions address specific nuances and requirements that have arisen from the use of internet auctions and prescribe the rules specific to internet auction conditions.</p>
Robt Talbott The Auctioneer	A			<p>Does not agree that a sale conducted under the authority of the Public Trustee should be excised from the Auction Sales Act because the scope of regulations protects the beneficiaries and the client customers of the sale.</p>

Motor vehicles	Options			Key points
Eddie Peters Motor cycles		B		<p>Retain the current licensing, but also with some additional conduct provisions. Without licensing the integrity of the industry will be lost. Regardless of whether you are a licensed real estate agent or a licensed motor vehicle dealer, the requirement of an additional auctioneer's licence is still required.</p> <p>Online auctions should be treated the same as live auctions and all the same provisions should apply. All licenced auctioneers to have a trust account for processing the proceeds of the auction.</p> <p>Once all vendors have been paid the agreed amount, the surplus funds can be transferred to the auction houses trading account.</p>
Plant and machinery	Options			Key points
Ben Gibson Tiger Asset Group			D	<p>Strongly advocates deregulating the auction sales industry and repealing the Act, leaving the Australian Consumer Law and Sale of Goods Act to apply to auction sales. The Australian national market for trade in plant in machinery is estimated to be approximately \$11b per annum with total sales by auction around \$3b. Sales by WA auctions are likely to be less than \$300m per annum. The largest state for equipment sales by auction is NSW which deregulated their system in circa 1993.</p> <p>This means that by far the majority of equipment sold in this country is already covered by the ACL and the Sale of Goods Act. It seems quite futile to place annual and onerous conditions on those who are selling such a very small portion of the overall equipment traded in this country and only here in WA. The deregulated system seems to work very well in NSW and other states.</p>
Darren Smith Smith Broughton		B		<p>Licensing provides for consumer confidence (for both sellers and buyers) Vulnerable vendors require the assistance of an experienced agent who has their interests in mind and has the requisite experience, processes and facilities at the vendor's disposal to ensure the best possible outcome to the vendor, given the prevailing market. The current license application process is not burdensome and is a key factor in reducing the number of unscrupulous persons entering the industry.</p> <p>Licensed motor vehicle dealers under the MVD Act already process vendors' applicable assets through a trust account. Would like to see this broadened to all consigned vendor assets regardless of whether they fall under the MVD Act or not.</p> <p>The requirement to run audit trust accounts will be a significant barrier to unscrupulous persons seeking to enter the industry. Trust account compliance should be a key industry requirement and interest received should be retained by the auctioneer to offset associated compliance costs which are significant.</p>
Sea food	Options			Key points
Theo Kailis Perth Fish Market			C	<p>There is no legislative obligation, such as a central marketing authority (e.g. Potato Board), that requires seafood to be marketed exclusively via our business and as such the services we provide to both the sellers (commercial licensed fisherman) and buyers (commercial licensed business operators) must be competitive and reflect market forces of supply and demand.</p> <p>Buyers and sellers are commercial operators within our business sector, not the general public.</p>

Theo Kailis Perth Fish Market					Like wool, grain and cattle traders, we have near on daily contact with both the buyers and sellers. This differs from the real estate and car industries who trade directly with members of the general public on an ad hoc or one off basis. On this basis supports Option C.
General auctioneers	Options				Key points
Johdi Farrel Graysonline	A				<p>Supports all the proposed conduct provisions as the company already has these provisions in place. The current system provides some consumer protection and due diligence to exclude unfit persons from holding an auctioneers license. While there are costs to industry and government they are minimal and the process is not onerous. Graysonline does not propose any further conduct provisions.</p> <p>Graysonline strongly opposes Option D to deregulate the auction industry. Deregulation of the industry would result in detriment to both consumers and auction businesses that already have best practice implemented. Deregulation may result in a potential increase of unethical business practices and criminal activity within the market.</p> <p>A single licence will still allow transparency of allowable activities while reducing costs and administrative requirements for both government and licensees. Retaining the current licensing requirements with the reduction of licence types would require a minimal transition period of 6-12 months to allow for government system changes and to educate current licence holders regarding the changes to licence types.</p> <p>It is imperative that all future proposed changes consider both business models and do not give unfair advantage or introduce unfair compliance burdens to either live traditional auctions or online auctions.</p>
Jack Gregson Gregsons			C		Gregsons are members of the Auctioneers and Valuers Association of Australia (AVAA) and agree with all the responses made in the AVAA's submission.
David Rumens Rumens & Co				D	<p>The art of conducting physical auctions is declining to the point where in the future auction houses will be more likely to offer online auctions rather than physical auction room auctions where crowds gather to make bids on lots offered. Deregulating the auction industry is not likely to have any detrimental effect on large auctioneers nor would it have any effect on the smaller auctioneers as very few are actively engaged in the conduct of general auctions on a full time basis.</p> <p>Smaller auctioneers are likely to decline in favour of online auctions where buyers need not stand around for long periods of time waiting for lots to be offered. They simply need to log on to inspect in person or by way of photograph and make their bids in the comfort of their house or office.</p> <p>The Consumer Protection Division should concentrate their efforts on how best to regulate the online process rather than the physical auction process.</p>
Joe Borg Newcrest Security		B			Each applicant must have the appropriate quality, be free from any criminal history and most importantly have integrity and support the code of conduct which represents the company for which he/she acts. The Act should introduce an appropriate penalty for any person who contravenes the Act by a fine and the cancellation of a licence with no renewal.

Joe Borg Newcrest Security		B		As for testimonials it also appropriate for the applicant to provide a witness statement from one who can vouch that the applicant is of good character to prove that he/she has the quality to hold and operate as a professional auctioneer. In the past there have been instances of dummy bidding and vendor bidding to raise the value.
JM & RE Knight		B		Believes auctioneers should continue to be licensed and that more stringent qualifications are required. Supports the proposed conduct provisions. Alleges serious problems in the farm clearing sales arena and vested interests in second hand and antique shops.
<i>Fine art, antiques and collectables industry</i>				
Peter McKenzie McKenzies Auctions			C D	Supports implementing either Option C or D for the following reasons: there are more than sufficient legal precedents existing in common law to regulate agents conducting auctions; the business is very self-regulating. "Dodgy" operators don't stay in business for long; there are auctioneers from the eastern states auctioning most weekends in Perth. This raises the question of why local firms need to be licensed; the internet has meant vendors can more easily contact and consign their collectables to the eastern states or overseas; costs and administration time have to be cut; ban any dishonest person from auctioneering. Licensing auctioneers seems pointless. It serves neither the public, the public purse nor the industry.
Peter Nowelski	A			Favours the first option which states "retain the status quo - make no changes to the current licensing system and conduct provisions".
Gillian Hayes Hayes Auctioneers	A			Happy with the status quo related to the licensing of auctioneers in WA, with perhaps a few modifications related to the conduct of on-line auctions. Does not at all support the notion that licences be abolished as convinced they are a sensible way to keep track of auctions and auctioneers in this state and to police what is happening within the trade. It is also a deterrent to those who might consider breaking the law and becoming unlicensed. Does not think that eastern states auctioneers should be able to appear in WA and conduct their own auctions without holding the appropriate West Australian licence. There is no obligation on the part of the visiting auctioneers for after sales service and complaints are well-nigh impossible to prosecute.

Associations	Options	Key points
Auctioneers and Valuers Association of Australia (AVAA)	C	<p>Supports the 2008 review recommendations. The costs associated with proposed conduct provisions are likely to only arise from the requirements on record keeping and the annual audit of trust accounts.</p> <p>The AVAA supports both of these recommendations and does not believe the costs to be prohibitive in light of the important protections that the changes represent. The current licencing requirements are overly burdensome relative to the protections they are intended to provide.</p> <p>The ACL and the MVD Act combined with the proposed conduct provisions under the Act, provide stronger protections for consumers than the licensing regulations making the licencing regime an unnecessary level of additional regulation and cost.</p> <p>The AVAA opposes Option D and the complete deregulation of the industry. The AVAA as an industry association with its own code of conduct recognises the importance of maintaining a set of ethical and professional standards.</p> <p>The AVAA recognises the importance of requiring members to maintain audited trust accounts to give confidence to vendors that their sale proceeds cannot be put at risk.</p> <p>It is essential to the integrity of the auction profession to maintain the confidence of the general public and vendors who rely on auctioneers to assist them with sale of their property.</p> <p>In order to maintain the confidence of the public it is essential that conduct provisions are able to be imposed on auctioneers.</p>
Australian Livestock & Property Agents Association Ltd (ALPA)	B	<p>Legislation should be introduced requiring standardised national licensing of livestock agents and professional buyers (applying to commission and salaried buyers), in order to raise the levels of compliance and general professionalism within the industry. Referred to the March 2017 report of the ACCC into the study of the livestock industry and the recommendation for the national licensing of livestock auctioneers.</p> <p>ALPA strongly supports adequate consumer protection and conduct provisions. The only costs likely to be incurred are costs associated for trust accounts. The cost to individual businesses would totally depend on the size of that business and if they already have trust accounts. ALPA would like to see a Trainee Auctioneers provision.</p> <p>ALPA supports Option B, followed by Option A. Does not agree with or support Option C or Option D. Strongly suggest that the government investigate and look at moving those currently licensed under other Acts and be grandfathered across to the Auction Sales Act, or incorporating all Auctioneer activities under one Act.</p> <p>Believes the deregulation of such an important part of daily transactions and activities in rural and remote areas as well as the cities is fraught with danger. The process is associated with large sums of money leaving an opening to corruption to the consumer's detriment.</p> <p>As far as any other changes to Terms and Conditions that are printed, government would be best guided by REIWA and other large practitioners in WA.</p>

Associations	Options			Key points
Real Estate Institute of WA (REIWA)				<p>D Does not support the retention of the status quo. REIWA's submission stated that the current licensing system does not appear to have enhanced consumer confidence and protection over time.</p> <p>Noted the existence of more robust legislative and regulatory regimes that support and protect consumers, such as the ACL, the REBA Act and an industry code of conduct (the Auction Code). REIWA introduced the Auction Code almost a decade ago with the following primary objectives:</p> <ul style="list-style-type: none"> • to regulate and standardise the procedures of REIWA members when conducting auctions; and • to provide consumer protection for both sellers and buyers in the auction process. <p>Stated that the Auction Code has provided some level of support to ensuring a professional industry and this level of self-regulation should continue.</p> <p>Opposed the current licensing regime for a number of reasons. As the regulatory regime is managed across three State Government agencies it is an inefficient and costly administrative burden for the Government. The costs of implementing this regime outweigh any benefits to consumers (both buyers and sellers) of real estate. The current regime does not require any level of knowledge for a person to conduct an auction.</p> <p>Other professional licensing regimes stipulate minimum educational requirements to enhance consumer confidence.</p> <p>The only barrier to entry in the current regulatory regime is passing the "fit and proper" test which merely requires obtaining a police clearance certificate and producing character testimonials. This test does not truly achieve 'fit and proper' standards but rather a procedure of asking friends to put pen-to-paper.</p> <p>Noted that there were no educational requirements under Option B. and that a person with no knowledge and experience with the auction method of sale could conduct an auction for any value and for any types of goods.</p> <p>Stated that Option C did not appear to have any relevance to real estate auctions, as an agent's conduct would be regulated under the REBA Act and the Auction Code. An advantage appeared to be that state regulators could remove auctioneers from the industry for serious breaches of misconduct, but REIWA was not aware of any auctioneer who previously had their licence terminated.</p> <p>Supported repealing the Auction Sales Act and deregulating the auction sales industry and industry led self-regulation with a strong industry code of conduct applicable to auction sales and an industry led accreditation scheme.</p> <p>Stated that if the Auction Sales Act were to continue in any form, real estate agents and sales representatives should be exempt from having to obtain an auction licence.</p>

Associations	Options			Key points
Kim Haywood WA Farmers Federation (WA Farmers)		B		<p>Supports and endorses Option B; also supports the introduction of a standardised national licensing system for livestock agents and professional buyers to raise the levels of compliance and general professionalism within the industry.</p> <p>A large percentage of members are actively engaged in the auction sales industry for the sale of land, machinery, chattels, agricultural produce and livestock.</p> <p>Believes the auction sales system is a valuable component of the industry's supply chain and an important contributor to the economic wellbeing of the agricultural sector in WA. In WA, the vast majority of auctions are taken by three to four multinational or ASX entities, for example Landmark, Elders and Primaries, and as such their financial strength gives comfort that the auction proceeds will reach the seller within the statutory auction payment terms, which is regulated by external auditors especially for entities that are public companies.</p> <p>A key difference between the auction sales system in the east as compared to the west is that there are no secondary agents operating in WA in the agriculture industry.</p> <p>Suggests agents buying for multiple vendors at one sale can create market distortions, and as a result has encouraged more producers to sell direct to meat processors rather than selling through the auction system. The development of electronic auction systems such as Auctions Plus has certainly helped to resolve this problem.</p> <p>A solution could be that agents should declare who they are buying for before the auction commences and consideration could be given to agent buyer thresholds at each sale. This could improve the transparency and provide clarity on the day of the sale.</p> <p>At present the Auctions Plus online system is the most transparent under law, but its use needs greater uptake in WA. The wool industry has developed a wool agent/buyer register, which has put transparency back into the market place.</p>
Consumers	Options			Key points
Amleto Conticello		B		<p>Has bought goods at auctions for many years and even though has been very happy with most things bought sees that there are some serious problems with auctions.</p> <p>People that have no experience will get ripped off as there are many games and tactics that auctioneers use to get the best price from unsuspecting customers.</p>
Brad Whincup		B		<p>Does not believe that auctioneers and vendors should have the right to bid on something they don't intend on buying, It makes it an uneven playing field.</p> <p>People at auctions are treated very poorly - bidders at auctions must be able to see proof of internet bids on large screens - there needs to be restrictions on online only auctions - there should be restrictions on online auctions for what they can auction.</p> <p>Auctioneers who bid dishonestly should have huge ramifications e.g. loss of auction licence for a period of time.</p>
John Staniforth-Smith		B		<p>It is an offence for bidders to collude at agricultural auctions. This should also include wool, as it is an agricultural product and there is no good reason why it is excluded.</p> <p>Wool should not be excluded from farm produce. It can lead to collusive buying, where one buyer can buy for a number of buyers and then split the produce up later, i.e. lot splitting.</p>

Government	Options			Key points
Consumer Advisory Committee			C	<p>A majority of the Committee supported the introduction of a negative licensing system for all auctioneers. One member was strongly in favour of retaining positive licensing in order to provide some assurance of probity of auctioneers.</p> <p>Regardless of whether positive or negative licensing is ultimately adopted, the Committee recommended that an appropriate education strategy be developed, such that consumers are able to easily access information about auctions on Consumer Protection's website, and information immediately prior to bidding at an auction (e.g. via a standard information brochure and/or compulsory displaying of applicable terms and conditions at an auction).</p> <p>It is essential that any education strategy emphasises that buyers must do their own research on the quality of the goods before bidding and satisfy themselves that the goods meet the standard that they expect.</p> <p>The Committee recommended, therefore, that Consumer Protection's website fully explains the differences between a retail sale of goods and sale of goods by auction.</p> <p>The Committee suggested that purchases by auction are a method of sale about which most consumers have little experience. It is therefore a critical role of Consumer Protection to ensure by way both of its education methodology and oversight of auctioneers that comprehensive information is easily available to consumers both on Consumer Protection's website, as well as at the point of sale.</p>
Small Business Development Corporation (SBDC)			C	<p>Supports the reform in the auction sales industry to remove the regulatory burden of the current licensing requirements under the <i>Auction Sales Act 1973</i> and also strengthening some conduct provisions to improve transparency and fairness for small businesses involved in auctions.</p>
Department of the Attorney General				<p>The Magistrates Court of WA supports the proposal for Consumer Protection to assume responsibility for administering the regulatory regime for auctioneers.</p>

9.3 Penalty Matrix: Auction Sales Act 1973

Offence ⁶⁵	NSW	Vic	Qld	SA	Tas	NT	WA (Current)	WA (Recommended)
Auctioneers to be licensed (section 6)	Needs to be a holder of real estate agent's licence and/or stock and station agent's licence \$11,000 ⁶⁶	Must be conducted by licensed real estate agent or is employed as an agent's representative \$77,730 or 12 months' imprisonment ⁶⁷	\$24,380 or 2 years imprisonment	\$5,000	Max of \$157,000	\$523.60	\$500	\$50,000
Collusive practices: mock auctions (section 25)	\$27,500 (individual); \$55,000 (corporation)	\$37,310.40 (individual); \$93,276 (corporation)	\$22,000 N/A	\$20,000 N/A	Max of \$78,500	\$123.20	\$1,000 imprisonment or for 12 months	\$50,000 or imprisonment for 12 months
Sales of cattle, sheep, pigs or goats (licensee to keep, maintain and retain register of stock sales) (section 30(2)(c))	N/A	N/A	N/A	N/A	N/A	N/A	\$500	\$10,000
Sales of cattle, sheep, pigs or goats (licensee, employee or clerk of auctioneer not to purchase stock without vendors consent) (section 30 (5) (c))	N/A	N/A	N/A	N/A	N/A	N/A	Max of \$1,000, or imprisonment for a term of not more than one year, or both	Max of \$50,000 or imprisonment for a term of not more than one year
Offences (where not otherwise provided)	N/A	N/A	N/A	N/A	N/A	N/A	Max of \$400	\$25,000

⁶⁵ Equivalent legislation: *Property, Stock and Business Agents Act 2002* (NSW); *Estate Agents Act 1980* (Vic); *Property Occupations Act 2014* (Qld); *Land Agents Act 1994* (SA); *Property Agents and Land Transactions Act 2016* (Tas); *Auctioneers Act* (NT); there is no equivalent legislation in the ACT.

⁶⁶ The penalty for unlicensed trading by a real estate agent in NSW is a maximum of \$11,000.

⁶⁷ The penalty for unlicensed trading by a real estate agent in Victoria is \$77,730 or 12 months' imprisonment for an individual and \$155,460 for a corporation.

9.4 WA Acts referencing sale by public auction

Aquatic Resources Management Act 2016
Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007
Civil Judgements Enforcement Act 2004
Conservation and Land Management Act 1984
Criminal and Found Property Disposal Act 2006
Criminal Code Act Compilation Act 1913
Disposal of Uncollected Goods Act 1970
Fair Trading Act 2010
Fines, Penalties and Infringement Notices Enforcement Act 1994
Firearms Act 1973
Fish Resources Management Act 1994
Forest Products Act 2000
Guardianship and Administration Act 1990
Housing Act 1980
Land Administration Act 1997
Liquor Control Act 1988
Local Government (Miscellaneous Provisions) Act 1960
Local Government Act 1995
Mines Safety and Inspection Act 1994
Mining Act 1978
Motor Vehicle Dealers Act 1973
Occupational Safety and Health Act 1984
Petroleum (Submerged Lands) Act 1982
Petroleum Act 1936
Petroleum and Geothermal Energy Resources Act 1967
Petroleum Pipelines Act 1969
Property Law Act 1969
Residential Parks (Long-stay Tenants) Act 2006
Retail Trading Hours Act 1987
Rights in Water and Irrigation Act 1914
Road Traffic (Vehicles) Act 2012
Sale of Goods (Vienna Convention) Act 1986
Sale of Goods Act 1895
State Supply Commission Act 1991
The Salvation Army (Western Australia) Property Trust Act 1931
Transfer of Land Act 1893
Trustees Act 1962
Warehousemen's Liens Act 1952

9.5 WA Regulations referencing sale by public auction

Animal Welfare (General) Regulations 2003
Biosecurity and Agriculture Management 2007
Caravan Parks and Camping Grounds Regulations 1997
Civil Judgements Enforcement Regulations 2005
Control of Vehicles (Off-road Areas) Regulations 1979
Court Security and Custodial Services Regulations 1999
Environmental Protection Regulations 1987
Fish Resources Management Regulations 1995
Forest Management Regulations 1993
Health (Cloth Materials) Regulations 1985
Jetties Regulations 1940
Land Administration Regulations 1998
Liquor Control Regulations 1989
Local Government (Financial Management) Regulations 1996
Magistrates Court (Civil Proceedings) Rules 2005
Mining Regulations 1981
Motor Vehicle Dealers (Licensing) Regulations 1974
Offshore Minerals Regulations 2010
Pearling (General) Regulations 1991
Port Authorities Regulations 2001
Prisons Regulations 1982
Real Estate and Business Agents (General) Regulations 1979
Residential Parks (Long-stay Tenants) Regulations 2007
Residential Tenancies Regulations 1989
Retirement Villages Regulations 1992
Road Traffic (Vehicles) Regulations 2014
Rules of the Supreme Court 1971
Sentence Administration Regulations 2003
Statistics Regulations (1907)
Western Australian Meat Industry Authority Regulations 1985
Wildlife Conservation Regulations 1970

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