



Radiocommunications (Spectrum Licence Allocation – 700 MHz Band) Determination 2016

The Australian Communications and Media Authority makes the following determination under section 60 and section 294 of the *Radiocommunications Act 1992*.

Dated: 15 DECEMBER 2016

Richard Bean

[signed]

Member

Anita Jacoby

[signed]

Member/~~General Manager~~

Australian Communications and Media Authority

Part 1—Preliminary

1 Name

This is the *Radiocommunications (Spectrum Licence Allocation – 700 MHz Band) Determination 2016*.

2 Commencement

This instrument commences at the start of the day after it is registered.

Note: The Federal Register of Legislation may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under section 60 and section 294 of the Act.

4 Interpretation

(1) In this instrument:

10 MHz lot: see Part 2 of Schedule 2.

5 MHz lot: see Part 2 of Schedule 2.

700 MHz band: see Part 1 of Schedule 2.

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

ACN has the meaning given by section 9 of the *Corporations Act 2001*.

Act means the *Radiocommunications Act 1992*.

affiliated: see sections 12 and 13.

allocation limits: see section 10.

allocation limits direction means the direction in section 6 of the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016*.

allocation process means the procedures to be applied in allocating spectrum licences, as determined in this instrument.

applicant means a person who has applied for registration as a bidder.

applicant information package means a package containing the information, forms and other documents set out in subsection 27(1).

application deadline: see paragraph 26(1)(f).

application form means the form approved by the ACMA under paragraph 27(1)(g).

ARBN has the meaning given by section 9 of the *Corporations Act 2001*.

associate: see section 11.

auction means an auction of lots held in accordance with this instrument.

auction manager means the person appointed under section 23.

auction period means the period commencing on the preference deadline and ending at the close of the auction under clause 14 of Schedule 1.

auction system means the system the ACMA makes available to bidders to make bids in the auction.

balance of the pre-determined price for a spectrum licence means either, or both, the delayed pre-determined price for the licence or the balance of the up-front pre-determined price for the licence, as the context requires.

balance of the upfront pre-determined price: see subsection 43(2).

balance of the upfront winning price: see subsection 73(2).

bid means a bid made on a lot, and includes a bid taken to be made on a lot.

bidder means a person registered by the ACMA as a bidder under section 53.

bid increment percentage: see section 36.

carrier has the same meaning as in the *Telecommunications Act 1997*.

confidential information: see section 16.

continue bid, in relation to a lot, means a bid made on the lot in a round of the auction that is equal to or greater than the specified price of the lot for that round.

delayed pre-determined price: see subsection 43(3).

delayed pre-determined price bank guarantee: see subsection 44(6).

delayed winning price: see subsection 73(3).

delayed winning price bank guarantee: see subsection 75(7).

deed of acknowledgement means a deed in the form approved under paragraph 27(1)(j) that has been completed and executed by an applicant in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

Note: Strict compliance with the form is required.

deed of confidentiality means a deed in the form approved under paragraph 27(1)(k) that has been completed and executed in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

Note: Strict compliance with the form is required.

deed of financial security means a deed in the form approved under paragraph 27(1)(h) that has been completed and executed in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

deposit means a payment made by an applicant under section 38.

designated area has the meaning given by the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016*.

Note: The designated area is the area bounded by the coordinates specified in Table A of the Schedule to the re-allocation declaration, excluding the Mid West Radio Quiet Zone (as defined in the re-allocation declaration).

exit bid, in relation to a lot, means a bid made on the lot in a round of the auction that is:

- (a) less than the specified price of the lot for that round; and
- (b) either:
 - (i) in any round other than the first round for bids on the lot – equal to or greater than the specified price of the lot for the previous round of the auction;
 - (ii) in the first round for bids on the lot – equal to or greater than the starting price for the lot.

final high bid: see subclauses 11(3) and (4) of Schedule 1.

Note: Subclauses 12(3) and 13(3) of Schedule 1 affect the meaning of **final high bid**.

final round for bids on the 10 MHz lot: see subclause 11(1) of Schedule 1.

final round of the auction: see subclause 11(2) of Schedule 1.

first auction instalment: see subparagraph 75(3)(b)(i).

first instalment: see paragraph 46(2)(a).

gross auction price: see subsection 75(10).

gross price: see subsection 46(4).

lot: see subsection (2).

lower band: see Part 1 of Schedule 2.

marketing plan means the *Radiocommunications Spectrum Marketing Plan (700 MHz unallocated lots band) 2016*.

pre-determined price for a spectrum licence means either, or both, the delayed pre-determined price for the licence or the upfront pre-determined price for the licence, as the context requires.

preference deadline: see paragraph 26(1)(g).

preference nomination form means the form approved by the ACMA under subsection 28(2).

preferred lots: see subsection 37(1).

Note 1: An applicant's **preferred lots** may be affected by subsection 38(4).

Note 2: A bidder may not be able to make a bid on one of its preferred lots in the circumstances set out in clause 4 of Schedule 1.

previous allocation determination means the *Radiocommunications (Spectrum Licence Allocation – Combinatorial Clock Auction) Determination 2012*.

previous successful bidder means each of the following:

- (a) Optus Mobile Pty Ltd ACN 054 365 696;
- (b) Telstra Corporation Ltd ACN 051 775 556.

Note: Each previous successful bidder was allocated a spectrum licence as a result of an auction held under the previous allocation determination.

pseudorandom means using computer-generated numbers that satisfy a statistical test for randomness, but are not generated by a truly random physical process.

public mobile telecommunications service has the same meaning as in the *Telecommunications Act 1997*.

re-allocation declaration means the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*.

recess day: see subclause 3(1) of Schedule 1.

register means the register of bidders maintained by the ACMA under section 52.

related body corporate has the meaning given by the *Corporations Act 2001*.

related person, in relation to an applicant or a bidder that is a body corporate, means any of the following:

- (a) a director or secretary of the applicant or bidder;
- (b) an employee of the applicant or bidder;
- (c) an employee of a related body corporate that provides services to the applicant or bidder.

residual 700 MHz band: see Part 1 of Schedule 2.

roaming services agreement means an agreement between carriers for the principal purpose of enabling end-users of public mobile telecommunications services supplied by one carrier to use public mobile telecommunications services supplied by another carrier, in geographic locations where the first-mentioned carrier's public mobile telecommunications services are not available.

second auction instalment: see subparagraph 75(3)(b)(ii).

second instalment: see paragraph 46(2)(b).

secured amount: see subsection 44(9).

secured auction amount: see subsection 75(11).

size, in relation to a lot, means:

- (a) for the 10 MHz lot – 10 MHz in the lower band and 10 MHz in the upper band;
- (b) for the 5 MHz lot – 5 MHz in the lower band and 5 MHz in the upper band.

Note: Each lot comprises two parts of the spectrum. For the 10 MHz lot, each part of the spectrum has the same bandwidth (10 MHz). For the 5 MHz lot, each part of the spectrum has the same bandwidth (5 MHz).

specified group of persons means:

- (a) in relation to an applicant or bidder – the applicant or bidder and all of the applicant's or bidder's associates;
- (b) in relation to a previous successful bidder – the previous successful bidder and all of the previous successful bidder's associates.

Note: The definition of **specified group of persons** is affected by subsection 12(2) and subsection 13(2).

specified price: see subclauses 5(2) to (6) of Schedule 1.

starting price, for a lot, means the amount set by the ACMA for the lot under subsection 28(1).

third auction instalment: see subparagraph 75(3)(b)(iii).

third instalment: see paragraph 46(2)(c).

upfront pre-determined price: see subsection 43(1).

upfront winning price: see subsection 73(1).

upper band: see Part 1 of Schedule 2.

winning bidder: see subclause 11(5) of Schedule 1.

Note: Subclauses 12(2) and 13(2) may affect who is a **winning bidder** for a lot.

winning price: see section 72.

working day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory, New South Wales or Victoria.

Note: A number of other expressions used in this instrument are defined in the Act, including the following:

- (a) ACCC;
- (b) ACMA;
- (c) spectrum;
- (d) spectrum licence.

In this instrument, **register** has a different meaning to that given to **Register** by section 5 of the Act.

- (2) In this instrument, each of the following is a **lot**:
 - (a) the 10 MHz lot;
 - (b) the 5 MHz lot.
- (3) In this instrument, the range of numbers that identifies a frequency range includes the higher, but not the lower, number.
- (4) In this instrument, a reference to time is a reference to the legal time in the Australian Capital Territory.

5 References to other legislative instruments, other instruments or writing

- (1) In this instrument, unless the contrary intention appears, a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

- (2) In this instrument, unless the contrary intention appears, a reference to an instrument or other writing (other than a legislative instrument) is a reference to that instrument or writing as existing from time to time.

Note: See section 314A of the Act.

6 Giving documents to ACMA

- (1) A document may be given to the ACMA under this instrument by:

- (a) delivering the document to the physical address specified in the applicant information package; or
- (b) emailing the document to the email address specified in the applicant information package in accordance with subsection (2); or
- (c) faxing the document to the fax number specified in the applicant information package in accordance with subsections (3) and (4).

Note 1: Subsection 38(8) has additional requirements for a deed of financial security lodged by email or fax.

Note 2: Subsection 44(8) has additional requirements for a delayed pre-determined price bank guarantee lodged by email or fax.

Note 3: Subsection 75(9) has additional requirements for a delayed winning price bank guarantee lodged by email or fax.

- (2) If a document is emailed:
 - (a) the document must be included as an attachment; and
 - (b) the document must be:
 - (i) if the document is a statutory declaration, statement under section 68, deed or bank guarantee—in PDF format or another format approved by the auction manager; or
 - (ii) if the document is not a document mentioned in subparagraph (i)—in Word, RTF or PDF format or another format approved by the auction manager.
- (3) If a document is faxed, the document must be accompanied by a cover sheet that states:
 - (a) the sender's name, postal address, telephone number and fax number; and
 - (b) the number of pages transmitted, including the cover sheet.
- (4) If the faxed document is a completed application form, a completed preference nomination form, a statutory declaration, a statement under section 68, a deed or a bank guarantee, the cover sheet must also state the type of document.

7 Payment of amounts

- (1) An amount paid to the ACMA on behalf of the Commonwealth under this instrument must be paid in Australian currency.
- (2) An amount must be paid by bank cheque or by electronic transfer.
- (3) An electronic transfer must be made into the bank account with the following details:
 - (a) Bank—ANZ Bank;
 - (b) Branch—Belconnen;
 - (c) BSB number—012-951;
 - (d) Account number—8379 24272;
 - (e) Account name—ACMA Official Administered Receipts.
- (4) An amount is taken to have been paid by a deadline specified in this instrument if:
 - (a) the ACMA receives a bank cheque for the full amount on or before the deadline; or
 - (b) both:
 - (i) the ACMA receives evidence that an electronic transfer of the full amount was made on or before the deadline (such as a transfer receipt); and
 - (ii) the amount is received in the ACMA's bank account specified in subsection (3) no later than 3 working days after the deadline; or

- (c) the ACMA receives other evidence which satisfies the ACMA that the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.
- (5) An amount payable under this instrument is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the amount payable.
 - Note: The effect of this subsection is that an applicant or bidder must add the value of any bank charge or government duty to the amount of a payment.
- (6) If an amount payable under this instrument is not an amount of whole dollars, the amount is rounded up to the next dollar.

8 Statutory declaration for body corporate

A statutory declaration required to be made in this instrument by a body corporate must be made by a director or secretary of the body corporate.

Part 2—Limits on allocation of spectrum

9 Simplified outline of this Part

This Part deals with the definition and application of the *allocation limits* that apply to the allocation of spectrum licences under this instrument.

The Minister has given the ACMA the allocation direction under subsection 60(10) of the Act, which requires the ACMA to determine procedures that impose limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may in total be used by the members of a specified group of persons, namely, any person and that person's associates.

This Part also sets out when two participants in the allocation process are *affiliated*. Generally, if two participants are affiliated, they cannot both participate in the allocation process.

This Part also sets out when a participant in the allocation process is *affiliated* with a previous successful bidder under the previous allocation determination. In determining and applying procedures imposing the allocation limits, the ACMA must take into account spectrum licences to be allocated under this instrument, and spectrum licences allocated under the previous allocation determination. Generally, if a participant is affiliated with a previous successful bidder, there may be a limit on which lots the participant may be able to nominate as its preferred lots in the allocation process.

10 Meaning of *allocation limits*

In this instrument, a reference to the *allocation limits* is a reference to the limits that, under the allocation limits direction:

- (a) must be imposed by the procedures determined in this instrument for the allocation of spectrum licences in the residual 700 MHz band; and
- (b) ensure that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, no person or specified group of persons may use more than the spectrum specified in Schedule 3 in the 700 MHz band.

Note: The Minister has given a direction to the ACMA, under subsection 60(10) of the Act, that limits be imposed on the aggregate of the parts of the spectrum in the 700 MHz band that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may be used by a person or specified group of persons. See the allocation limits direction.

11 Meaning of *associate*

- (1) In this instrument, *associate*, in relation to a person, means:
 - (a) for a body corporate:
 - (i) a director or secretary of the body; or
 - (ii) a related body corporate; or
 - (iii) a director or secretary of a related body corporate; or
 - (iv) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or
 - (b) for an individual:
 - (i) the individual's spouse; or

- (ii) the individual's de facto partner (within the meaning given by the *Acts Interpretation Act 1901*); or
 - (iii) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
 - (iv) a body corporate of which the individual is a director or secretary; or
 - (v) a body corporate that is related to a body corporate of which the individual is a director or secretary; or
- (c) in any case – any other person (other than the Commonwealth represented by the ACMA) who has a relevant agreement with the person that:
- (i) is for the use by a party to the agreement of spectrum licensed to either of those parties under a spectrum licence for residual 700 MHz band spectrum in the designated area; or
 - (ii) relates to the acquisition of a spectrum licence for residual 700 MHz band spectrum in the designated area.
- (2) For paragraph (1)(c), a **relevant agreement** means an agreement, arrangement or understanding:
- (a) whether formal or informal or partly formal and partly informal; and
 - (b) whether written or oral or partly written and partly oral; and
 - (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;
- other than a roaming services agreement or an agreement between carriers provided for by or under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.

12 Affiliation between applicants or bidders

- (1) Two applicants or bidders are **affiliated** if:
- (a) the applicants or bidders are associates of each other; or
 - (b) the specified group of persons in relation to one applicant or bidder has at least one member in common with the specified group of persons in relation to the other applicant or bidder.

Note: Paragraph 12(1)(b) means that 2 applicants or bidders are affiliated if they have an associate in common.

- (2) If 2 applicants or bidders are affiliated, they are taken to be in a single specified group of persons for the purpose of the allocation limits.

Note: Section 12 is recursive, so that more than 2 applicants or bidders may be taken to be in a single specified group of persons for the purpose of the allocation limits. See also the definition of **specified group of persons** in the *Radiocommunications (Spectrum Licence Allocation–Residual 700 MHz Spectrum) Direction 2016*.

13 Affiliation between applicant or bidder and previous successful bidder

- (1) An applicant or bidder is **affiliated** with a previous successful bidder if:
- (a) the applicant or bidder and the previous successful bidder are associates of each other; or
 - (b) the specified group of persons in relation to the applicant or bidder has at least one member in common with the specified group of persons in relation to the previous successful bidder.

Note: Paragraph 13(1)(b) means that an applicant or bidder is affiliated with a previous successful bidder if the applicant or bidder and the previous successful bidder have an associate in common.

- (2) If an applicant or bidder is affiliated with a previous successful bidder, the applicant or bidder and the previous successful bidder are taken to be in a single specified group of persons for the purpose of the allocation limits.

Note: Section 13 is recursive, so that one or more previous successful bidders, and one or more applicants or bidders, may be taken to be in a single specified group of persons for the purpose of the allocation limits. See also the definition of *specified group of persons* in the *Radiocommunications (Spectrum Licence Allocation–Residual 700 MHz Spectrum) Direction 2016*.

14 Information relevant to considering whether applicants, bidders or previous successful bidders are affiliated

- (1) When considering under this instrument whether 2 or more applicants or bidders are affiliated, or whether one or more applicants or bidders are affiliated with one or more previous successful bidders, the ACMA must have regard to:
- (a) application forms given under paragraph 29(1)(a); and
 - (b) statutory declarations and statements made under this instrument.
- (2) The ACMA may have regard to any other information that it considers relevant, including:
- (a) application forms lodged under paragraph 4.7(1)(a) of the previous allocation determination; and
 - (b) statutory declarations and statements made under the previous allocation determination.

Part 3—Confidentiality

15 Simplified outline of this Part

This Part imposes a confidentiality obligation on participants in the allocation process.

A person who makes an application to be registered as a bidder in an auction must keep particular information confidential, including information about the person's bidding strategy and about the amount the person is willing to pay for a spectrum licence, subject to some permitted disclosures (such as to the ACMA).

Others who know this information may also be subject to an obligation to keep the information confidential (including some employees of the person).

There is also an obligation on the person making the application to report any disclosures of confidential information.

16 Meaning of *confidential information*

In this instrument, *confidential information*, in relation to an applicant or bidder, means:

- (a) documents the applicant or bidder has given to the ACMA for the purpose of the allocation process; and
- (b) information provided to the bidder under subsection 53(2) for the purpose of participating in an auction; and
- (c) a bid made by the bidder in the auction; and
- (d) a bid proposed to be made by the applicant or bidder or a bid under consideration by the applicant or bidder; and
- (e) the applicant's or bidder's bidding strategy; and
- (f) the amount the applicant or bidder is willing to pay for:
 - (i) the 10 MHz lot; or
 - (ii) the 5 MHz lot; or
 - (iii) both the 10 MHz lot and the 5 MHz lot; and
- (g) information that, if disclosed, could be reasonably expected to affect or be capable of affecting:
 - (i) bids made or proposed to be made by another applicant or bidder; or
 - (ii) another applicant or bidder's bidding strategy; and
- (h) information that, if disclosed, could be reasonably expected to affect or be capable of affecting the outcome of the allocation process.

17 Obligation not to disclose confidential information

- (1) An applicant or bidder, or a related person who has knowledge of the applicant's or bidder's confidential information, must not, either directly or indirectly, disclose the applicant's or bidder's confidential information about the allocation process to any person.
- (2) Subsection (1) does not prohibit an applicant or bidder, or a related person of an applicant or bidder, disclosing information about the allocation process:
 - (a) for the purpose of obtaining advice relating to the allocation process from a person in the person's professional capacity; or

- (b) for the purpose of obtaining finance to make a payment in relation to the allocation process; or
- (c) to the ACMA; or
- (d) for an applicant or bidder – to a related person of that applicant or bidder; or
- (e) for a related person of an applicant or bidder – to that same applicant or bidder, or to another related person of the same applicant or bidder; or
- (f) as authorised by this instrument or as otherwise required by law.

Note: In some cases, the person to whom the information is disclosed may become a related person who is required to give a deed of confidentiality to the ACMA – see section 21.

- (3) Subsection (1) does not prohibit an applicant or bidder, or a related person of an applicant or bidder, disclosing information about the allocation process if:
 - (a) the information is already publicly available; and
 - (b) the information was not made available because of a breach of this section.

18 Duration of confidentiality obligations

Section 17 applies to an applicant or bidder and a related person of the applicant or bidder until:

- (a) the applicant is notified under subsection 45(1) or 46(1) that the ACMA has received the applicant's acceptance of an offer of a spectrum licence; or
- (b) the bidder is notified under subsection 67(1) that the bidder is not a winning bidder; or
- (c) the applicant, as a withdrawn applicant, is notified under subsection 67(3) that the applicant's confidentiality obligations are at an end; or
- (d) the bidder, as a winning bidder, makes a statement under section 68.

19 Reporting breach of confidentiality

An applicant or bidder, or related person of an applicant or bidder, who discloses confidential information in breach of section 17 or who receives the confidential information of another applicant or bidder must report the disclosure or receipt to the ACMA in writing as soon as possible, but no later than 2 working days after becoming aware the disclosure or receipt has occurred.

20 Notice of breach of confidentiality

- (1) If the ACMA has reason to believe that an applicant or bidder, or a related person of the applicant or bidder, may have disclosed confidential information in breach of section 17 or received confidential information as a result of a breach of section 17, the ACMA must:
 - (a) tell the applicant or bidder, giving details of the matter; and
 - (b) ask the applicant or bidder to make submissions about the matter; and
 - (c) state a deadline for the receipt of submissions that is no more than 5 working days after the date of the request.
- (2) If the ACMA forms the belief before:
 - (a) notifying the applicant under subsection 45(1) or 46(1) that the ACMA has received the applicant's acceptance of an offer of a spectrum licence; or
 - (b) the end of the auction period;the ACMA is not required to tell the applicant or bidder before that time, but must tell the applicant or bidder as soon as practicable after that time.

21 Deed of confidentiality required from related persons

- (1) A related person of an applicant or bidder who has knowledge of the applicant's or bidder's confidential information must give the ACMA a deed of confidentiality if the person is:
 - (a) an employee of the applicant or bidder; or
 - (b) an employee of a related body corporate of the applicant or bidder that provides services to the applicant or bidder.
- (2) If a person mentioned in paragraph (1)(a) or (b) receives knowledge of the applicant's confidential information before the application deadline, the person must give the ACMA the deed of confidentiality before the application deadline.

Note: A deed of confidentiality form must be provided by the ACMA as part of the applicant information package on the ACMA's website at <http://www.acma.gov.au> – see section 26 and paragraph 27(1)(k).

Part 4—Procedures before auction or allocation for a pre-determined price

Division 1—Simplified outline

22 Simplified outline of this Part

This Part deals with the procedures to be undertaken before conducting the auction or allocating spectrum licences for a pre-determined price.

The ACMA must make decisions in relation to the allocation process, including setting deadlines by which persons wishing to participate in the allocation process must give the ACMA completed forms and information. The ACMA must also advertise the auction and prepare an applicant information package.

Persons wishing to participate in the allocation process must complete forms, deeds and declarations, and give them to the ACMA by the relevant deadlines. Some of the forms and declarations will contain information about the associates of the person. The ACMA will use this information to work out whether any applicants are affiliated with each other, or with a previous successful bidder. If there are such affiliations, this may have consequences for an applicant's ability to participate in the allocation process.

This Part also requires those applicants who are able to participate in the allocation process to pay a deposit, or provide a deed of financial security, in relation to the lots on which those applicants wish to bid.

Division 2—Preliminary

23 Auction manager

The ACMA must, in writing, appoint a person to manage the auction.

24 Setting application fee

Before the ACMA publishes a notice inviting applications for the auction, it must, in writing, set the amount of the application fee.

25 Application fee not refundable

An application fee paid under this instrument is not refundable in any circumstances, including if an applicant withdraws from the auction before the preference deadline or is not permitted to make a bid on a lot in the auction.

Division 3—Advertising the auction

26 Advertising of auction by ACMA

- (1) The ACMA must publish on its website a notice that:
 - (a) describes the parts of the spectrum to be auctioned; and
 - (b) gives a brief description of the way the auction will be conducted; and

- (c) states that the auction will be conducted in accordance with this instrument; and
 - (d) states that the ACMA may conclude that it can allocate a spectrum licence or licences for lots at a pre-determined price without having to conduct an auction; and
 - (e) invites persons to apply to the ACMA to take part in the auction; and
 - (f) states the date and time (the *application deadline*) before which:
 - (i) completed application forms must be received by the ACMA; and
 - (ii) the application fee must be paid to the ACMA on behalf of the Commonwealth; and
 - (g) states the date and time (the *preference deadline*) before which:
 - (i) completed preference nomination forms must be received by the ACMA; and
 - (ii) deposits must be paid to the ACMA on behalf of the Commonwealth or deeds of financial security must be given to the ACMA on behalf of the Commonwealth; and
 - (h) states that applications may only be withdrawn before the preference deadline; and
 - (i) states that the applicant information package can be obtained from the ACMA's website at the electronic address given in the notice.
- (2) If a matter mentioned in the notice changes, the ACMA must publish another notice giving details of the change on its website.
- (3) The ACMA may publish the information required by subsections (1) and (2) by additional methods, and may publish other information about the auction by any method it chooses.

27 Applicant information package

- (1) The applicant information package must contain the following documents and information:
- (a) the re-allocation declaration;
 - (b) the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016*;
 - (c) the marketing plan;
 - (d) this instrument;
 - (e) a guide to the auction;
 - (f) a statement that the ACMA may offer to allocate spectrum licences for lots for a pre-determined price;
 - (g) an application form approved by the ACMA, with instructions for completing and giving the form to the ACMA;
 - (h) a deed of financial security form approved by the ACMA;
 - (i) information about providing a deed of financial security as an alternative to a deposit;
 - (j) a deed of acknowledgment form approved by the ACMA, that includes a statement to the effect that an applicant understands and agrees to be bound by the provisions of this instrument;
 - (k) a deed of confidentiality form approved by the ACMA, that includes a statement that an applicant (or related person of an applicant) agrees not to disclose confidential information before section 17 ceases to apply to the relevant applicant or the related person;
 - (l) statutory declaration forms for the purposes of this instrument;
 - (m) the amount of the application fee for the auction;

- (n) the application deadline;
 - (o) the preference deadline;
 - (p) advice that the preference deadline is the last time for withdrawal from the auction;
 - (q) the physical address for giving documents to the ACMA;
 - (r) the email address for giving documents to the ACMA;
 - (s) the fax number for giving documents to the ACMA.
- (2) The applicant information package may also contain other information about the allocation process.
 - (3) The applicant information package must be published on the ACMA's website.
 - (4) If the ACMA makes any change to the contents of the applicant information package after it is published, the ACMA must publish a notice giving details of the change on its website.

28 Starting prices

- (1) The ACMA must set the starting price for each of:
 - (a) the 10 MHz lot; and
 - (b) the 5 MHz lot.

Note: The starting price for a lot must be set in a manner consistent with the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Sepectrum) Direction 2016*.

- (2) After setting the starting prices, the ACMA must approve a preference nomination form.
- (3) After approving the preference nomination form, the ACMA must publish the starting prices and the preference nomination form on its website.

Division 4—Application to participate in auction

29 Making an application

- (1) A person may apply to become registered as a bidder in the auction by:
 - (a) giving the ACMA a completed application form; and
 - (b) giving the ACMA a deed of acknowledgement; and
 - (c) giving the ACMA a deed of confidentiality executed by the applicant; and
 - (d) paying the application fee;

before the application deadline.

Note: For information on how the application fee must be paid, see section 7.

- (2) An applicant may give the ACMA an updated document for paragraphs (1)(a) to (c) at any time until the application deadline, but not after the deadline.

30 Applicants to notify ACMA if application information incorrect

If an applicant knows that any of the information in the application is incorrect, or has become incorrect, the applicant must immediately give the ACMA the correct information.

31 Applicant to provide statutory declaration

- (1) After the application deadline, the ACMA must:

- (a) give each applicant details about the identity of all other applicants, the persons identified as the associates of other applicants, and all previous successful bidders; and
- (b) ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant or a previous successful bidder and, if so, identifying the other applicant or the previous successful bidder and giving details of the affiliation.

Note: A previous successful bidder may also be an applicant.

- (2) The ACMA must state a deadline, at least 5 working days after the date of the request, before which the statutory declaration must be received by the ACMA.

32 Failure to provide statutory declaration

- (1) If an applicant does not give the ACMA a statutory declaration in accordance with section 31, the applicant is taken to have withdrawn its application.
- (2) The ACMA must tell an applicant in writing if it is taken to have withdrawn under subsection (1).

33 Procedure if ACMA satisfied applicants affiliated

- (1) If the ACMA is satisfied that 2 or more applicants are affiliated, the ACMA must, in writing, notify the affiliated applicants that:
 - (a) the ACMA is satisfied, on the basis set out in the notice, that the applicants are affiliated; and
 - (b) to participate in the auction the affiliated applicants must:
 - (i) withdraw the applications of all the affiliated applicants and submit a new application under section 34; or
 - (ii) withdraw the applications of all but one of the affiliated applicants.
- (2) Within 10 working days of the ACMA notifying the affiliated applicants under subsection (1), the applicants must notify the ACMA, in writing, which option under paragraph (1)(b) the applicants have decided to take.
- (3) If the affiliated applicants do not notify the ACMA within 10 working days, each affiliated applicant is taken to have withdrawn its application.
- (4) If the affiliated applicants notify the ACMA that they have decided to take the option in subparagraph (1)(b)(ii), and more than one affiliated applicant does not withdraw its application by the preference deadline, each of the remaining affiliated applicants is taken to have withdrawn its application.
- (5) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (3) or (4).

34 Requirement for new application

- (1) If a group of affiliated applicants notified by the ACMA under subsection 33(1) decides to submit a new application, the new applicant must be a body corporate whose only members are one or more of those affiliated applicants.
- (2) The new applicant must, within 10 working days of the ACMA notifying the affiliated applicants under subsection 33(1):
 - (a) give the ACMA a completed application form; and

(b) pay the application fee.

Note: For information on how the application fee must be paid, see section 7.

- (3) If the ACMA receives a completed application form and application fee under subsection (2), the ACMA must give each applicant (including the new applicant) updated details about the identity of all other applicants and the persons identified as the associates of other applicants.
- (4) The updated details do not need to include details about those applicants who have already withdrawn their applications.
- (5) The new applicant must, no later than 3 working days after the ACMA gives the new applicant the updated details (or, if the ACMA agrees to a later time, the agreed time), give the ACMA:
 - (a) a deed of acknowledgement; and
 - (b) a deed of confidentiality executed by the new applicant; and
 - (c) a statutory declaration that the new applicant is not affiliated with any other applicant in the updated details.
- (6) The ACMA must not accept a new application under this section unless it is satisfied that the new applicant is not affiliated with any applicant who has not withdrawn its application, including another new applicant.

35 Procedure if ACMA satisfied that applicant is affiliated with a previous successful bidder

If the ACMA is satisfied that:

- (a) an applicant is affiliated with a previous successful bidder; and
- (b) that previous successful bidder is not also an applicant;

the ACMA must, in writing, notify the applicant and tell it the basis on which the ACMA is satisfied the applicant is affiliated with a previous successful bidder.

Note 1: If the previous successful bidder is also an applicant, section 33 applies.

Note 2: An applicant who is affiliated with a previous successful bidder may not be able to nominate a particular lot, or both lots, as its preferred lots under section 37.

Note 3: An applicant who is affiliated with a previous successful bidder may not be able to bid on the 5 MHz lot in particular circumstances under Schedule 1.

Division 5—Setting the bid increment percentage

36 Bid increment percentage

After the application deadline, the ACMA must set the *bid increment percentage* for each lot as a percentage of the starting price for the lot in the first round, and of the specified price for the lot in any other round.

Note: The auction manager may vary the percentage set under section 36 – see clause 6 of Schedule 1.

Division 6—Preference nomination and financial security

37 Giving preference nomination form

- (1) An applicant must nominate its *preferred lots* by giving the ACMA a completed preference nomination form before the preference deadline.

(2) Subject to subsections (3) and (4), an applicant may nominate:

- (a) the 10 MHz lot; or
- (b) the 5 MHz lot; or
- (c) both the 10 MHz lot and the 5 MHz lot;

as its preferred lots.

Note 1: If an applicant becoming the winning bidder for one of the lots would exceed the allocation limits, subsections (3) and (4) prevent that applicant from nominating that lot as one of its preferred lots.

Note 2: If an applicant becoming the winning bidder for both lots would result in the applicant being able to use spectrum in excess of the allocation limits, Schedule 1 prevents that applicant from bidding on the 5 MHz lot if the applicant is the winning bidder for the 10 MHz lot.

(3) If:

- (a) the applicant is, or is affiliated with, a previous successful bidder; and
- (b) the aggregate of:
 - (i) the lot size of the 10 MHz lot; and
 - (ii) the part of the spectrum (if any) that the applicant, or the specified group of persons that includes the applicant, may use as a result of the allocation of spectrum licences under the previous allocation determination;exceeds the allocation limits;

the applicant must not nominate the 10 MHz lot as one of its preferred lots.

Note 1: An applicant's ability to nominate preferred lots in the auction is restricted by the allocation limits. In particular, the applicant's ability to nominate preferred lots in the auction may be restricted as a result of the application of the allocation limits to the lots to be auctioned under this instrument and the spectrum licences allocated under the previous allocation determination.

Note 2: An applicant's preferred lots may also be affected by subsection (4) and by subsection 38(4).

(4) If:

- (a) the applicant is, or is affiliated with, a previous successful bidder; and
- (b) the aggregate of:
 - (i) the lot size of the 5 MHz lot; and
 - (ii) the part of the spectrum (if any) that the applicant, or the specified group of persons that includes the applicant, may use as a result of the allocation of spectrum licences under the previous allocation determination;exceeds the allocation limits;

the applicant must not nominate the 5 MHz lot as one of its preferred lots.

Note 1: An applicant's ability to nominate preferred lots in the auction is restricted by the allocation limits. In particular, the applicant's ability to nominate preferred lots in the auction may be restricted as a result of the application of the allocation limits to the lots to be auctioned under this instrument and the spectrum licences allocated under the previous allocation determination.

Note 2: As a result of the allocation limits, if this subsection prevents an applicant from nominating the 5 MHz lot as one of its preferred lots, subsection (3) will prevent the applicant from nominating the 10 MHz lot and, as a result, both subsections have the effect of preventing the applicant from being allocated a spectrum licence under this instrument, and subsection (6) provides that the applicant is taken to have withdrawn its application.

(5) An applicant may change the preferred lots nominated by giving the ACMA a new completed preference nomination form at any time until the preference deadline, but not after the deadline.

(6) If:

- (a) an applicant does not nominate its preferred lots by the preference deadline; or

(b) subsection (4) applies to an applicant;
the applicant is taken to have withdrawn its application.

- (7) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (6).

38 Deposit or deed of financial security required

- (1) An applicant must, before the preference deadline:
- (a) pay a deposit of an amount to the ACMA on behalf of the Commonwealth; or
 - (b) give the ACMA on behalf of the Commonwealth a deed of financial security, for an amount; or
 - (c) pay a deposit of part of an amount and give a deed of financial security for the remainder.

Note: For information on how a deposit is paid, see section 7. For information on how a deed of financial security is given, see section 6 and subsection (8).

- (2) For the purposes of subsection (1) the **amount** required, in relation to an applicant, is:
- (a) if the applicant nominated both the 10 MHz lot and the 5 MHz lot as its preferred lots – 10 percent of the starting price of the 10 MHz lot;
 - (b) if the applicant nominated only the 10 MHz lot as its preferred lot – 10 percent of the starting price of the 10 MHz lot;
 - (c) if the applicant nominated only the 5 MHz lot as its preferred lot – 10 percent of the starting price of the 5 MHz lot.
- (3) If an applicant pays a deposit or gives a deed of financial security (or both) for an amount less than the amount under subsection (2), the ACMA must, in writing, notify the applicant that:
- (a) the applicant has paid a deposit or given a deed of financial security (or both), whichever the case may be, for less than the amount under subsection (2); and
 - (b) the applicant must, before the preference deadline or no later than 3 working days after the date of the notice (whichever is the later), pay a deposit or give a deed of financial security (or both) for the amount under subsection (2).
- (4) If the applicant does not comply with the notice given under subsection (3):
- (a) if:
 - (i) the applicant nominated both lots as its preferred lots; and
 - (ii) 10 percent of the starting price for the 10 MHz lot is greater than the amount of the deposit paid or the deed of financial security given (or both) by the applicant; and
 - (iii) 10 percent of the starting price for the 5 MHz lot is equal to or less than the amount of the deposit paid or the deed of financial security given (or both) by the applicant;the applicant is taken to have nominated only the 5 MHz lot as its preferred lot;
 - (b) in any other case – the applicant is taken to have withdrawn its application.
- (5) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (4).
- (6) A deed of financial security must be executed by an Australian-owned authorised deposit-taking institution (as defined in the *Banking Act 1959*) which is a bank.

- (7) If a deed of financial security is executed by a person acting under a power of attorney for a body corporate, the applicant must give the ACMA a copy of the power of attorney with the deed.
- (8) If a deed of financial security is given to the ACMA by email or fax before the preference deadline, the original deed must be received by the ACMA no later than 3 working days after the preference deadline (or, if the ACMA agrees to a later time, the agreed time) for the deed to be taken to have been given to the ACMA.
- (9) An applicant is taken to have withdrawn its application if:
 - (a) the applicant fails to pay a deposit or give a deed of financial security before the preference deadline; or
 - (b) the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in subsection (6).
- (10) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (9).

Division 7—Withdrawal

39 Withdrawal of application

- (1) An applicant may withdraw its application before the preference deadline, by giving the ACMA notice in writing.
- (2) If an applicant who withdraws its application under subsection (1), or who is taken to have withdrawn its application under another section of this instrument, has paid a deposit under section 38, the ACMA must refund the deposit.
- (3) Subsection (2) is subject to sections 85 and 88.
- (4) An applicant may not withdraw its application after the preference deadline.
- (5) An applicant must not be re-admitted to the auction after withdrawing its application.

Part 5—Allocation for a pre-determined price

40 Simplified outline of this Part

This Part deals with the procedures to be undertaken if, having regard to the information provided by applicants in relation to their preferred lots, the ACMA considers it can allocate spectrum licences without conducting an auction.

In these circumstances, the ACMA will offer to allocate spectrum licences to the relevant applicants. An applicant who accepts the offer will have the choice of paying an upfront pre-determined price, which is the sum of the starting prices of the lots to be included in the spectrum licence, or a delayed pre-determined price, which is the sum of the starting prices of the lots to be included in the spectrum licence plus an additional percentage of that sum. The delayed pre-determined price is to be paid in three instalments. The first instalment is to be accompanied by a bank guarantee that secures the payment of 5 per cent of the second and third instalments.

If an applicant accepts the offer, but fails to pay the upfront pre-determined price or the first instalment of the delayed pre-determined price, the applicant is not entitled to be issued the licence.

41 Allocation for a pre-determined price without an auction

- (1) If, before the auction manager sets the start date and time for the first and second rounds of the auction under section 58, the ACMA considers that it may be able to identify the person willing to make the highest value payment for the allocation of a spectrum licence for a lot, the ACMA may offer to allocate the spectrum licence for a pre-determined price, as set out in this Part.
- (2) An offer of a spectrum licence is conditional on payment of the pre-determined price.

Note: See subsections 44(4) and (5).

42 ACMA must have regard to applicants' requirements

In deciding under subsection 41(1) whether it is able to identify the person willing to make the highest value payment for a spectrum licence, and in identifying lots for the purposes of that subsection, the ACMA must only have regard to:

- (a) each applicant's preferred lots; and
- (b) such other information about each applicant's preferred lots that the applicant may provide to the ACMA.

Note: The allocation limits may affect the lots an applicant may nominate as its preferred lots.

43 The upfront pre-determined price and the delayed pre-determined price

- (1) The **upfront pre-determined price** for a spectrum licence is worked out as follows:
 - (a) identify each lot to be included in the spectrum licence;
 - (b) add up the starting prices for each lot.

Note: The starting price is set by the ACMA under subsection 28(1).

- (2) The **balance of the upfront pre-determined price** for a spectrum licence is the upfront pre-determined price less the amount of any deposit paid by the applicant.

- (3) The *delayed pre-determined price* for a spectrum licence is the sum of:
- (a) the deposit paid by the successful applicant for the licence under section 38 (if any);
 - (b) the first instalment for the licence;
 - (c) the second instalment for the licence; and
 - (d) the third instalment for the licence.

Note: The first, second and third instalments to be paid in relation to a spectrum licence are calculated by reference to the starting prices for the lots to be included in the licence (see section 46). The starting price is set by the ACMA under subsection 28(1). The ACMA must set starting prices in a manner that is consistent with the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016*.

Note 2: The sum of the present value of each of the instalments, and of the deposit (if any), is the same as the sum of the starting prices for the lots to be included in the licence, when calculated in accordance with the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016*.

44 Offer of spectrum licence and decision on pre-determined price

- (1) If the ACMA considers under subsection 41(1) that it may allocate a spectrum licence for lots to an applicant without having to conduct an auction, the ACMA may offer the applicant a spectrum licence for the lots to be included in that licence.
- (2) The ACMA will send the applicant, by registered mail:
- (a) a draft of the spectrum licence; and
 - (b) a notice stating:
 - (i) that the applicant is offered a spectrum licence for the lots to be included in that licence; and
 - (ii) the amount of the upfront pre-determined price for the licence offered to the applicant; and
 - (iii) the amount of the delayed pre-determined price for the licence offered to the applicant; and
 - (iv) the amount of any deposit paid by the applicant and held by the ACMA or the Commonwealth; and
 - (v) the balance of the upfront pre-determined price.
- (3) An applicant who wishes to accept the ACMA's offer must do so by notifying the ACMA in writing within 10 working days of receiving the offer and agreeing, in writing, either:
- (a) to pay the balance of the upfront pre-determined price for the spectrum licence in accordance with section 45; or
 - (b) to pay the delayed pre-determined price for the spectrum licence in accordance with section 46.

Note: The delayed pre-determined price for a spectrum licence is the sum of the deposit paid (if any) in addition to the first instalment, the second instalment and the third instalment. If a deposit has been paid, the amount of the deposit reduces the amount of the first instalment.

- (4) If an applicant accepts the offer of the spectrum licence and agrees to pay the balance of the upfront pre-determined price for the spectrum licence in accordance with section 45, the applicant is entitled to be issued the spectrum licence offered to it on payment of the balance of the upfront pre-determined price in accordance with section 45.
- (5) Subject to subsection (6), if an applicant accepts the offer of the spectrum licence and agrees to pay the delayed pre-determined price for the spectrum licence in accordance

with section 46, the applicant is entitled to be issued the spectrum licence offered to it on payment of the first instalment in accordance with section 46.

Note 1: If an applicant does not accept the offer of a spectrum licence, section 47 applies.

Note 2: For the issue of spectrum licences, see section 62 of the Act.

- (6) If an applicant accepts the offer of the spectrum licence and agrees to pay the delayed pre-determined price for the spectrum licence in accordance with section 46, the applicant is not entitled to be issued a spectrum licence unless the applicant gives the ACMA an irrevocable bank guarantee securing the secured amount, issued by an Australian-owned authorised deposit-taking institution (as defined in the *Banking Act 1959*) which is a bank, in a form approved by the ACMA (***delayed pre-determined price bank guarantee***), by no later than the date mentioned in paragraph 46(2)(a).

Note 1: If the applicant fails to pay an instalment other than the first instalment, the applicant may be in breach of the licence condition required to be included in a spectrum licence by section 67 of the Act.

Note 2: If either, or both, the second instalment and third instalment are not paid in accordance with section 46, the ACMA or the Commonwealth may require the authorised deposit-taking institution that has issued the delayed pre-determined price bank guarantee to pay the amount secured by the delayed pre-determined price bank guarantee.

Note 3: See section 90, in relation to the rights of the ACMA and the Commonwealth.

- (7) If a spectrum licence is issued to an applicant in accordance with subsection (5), each of the first instalment, the second instalment and the third instalment is not refundable in any circumstances.
- (8) If a delayed pre-determined price bank guarantee is given to the ACMA by email or fax before the date mentioned in subsection (6), the original guarantee must be received by the ACMA no later than 3 working days after that date (or, if the ACMA agrees to a later time, the agreed time) for the guarantee to be taken to have been given to the ACMA.
- (9) For the purposes of subsection (6), the ***secured amount*** is:
- (a) in the period commencing on the date mentioned in paragraph 46(2)(a) and ending on the date (if any) the second instalment is paid – 5 per cent of the sum of the second instalment and the third instalment;
 - (b) in the period commencing on the day after the date the second instalment is paid and ending on the date (if any) the third instalment is paid – 5 per cent of the third instalment.

45 Payment of the balance of the upfront pre-determined price

- (1) If an applicant accepts the offer of a spectrum licence and agrees to pay the balance of the upfront pre-determined price for the licence, the ACMA must notify the applicant by registered mail that the ACMA has received the applicant's acceptance.
- (2) The balance of the upfront pre-determined price for a spectrum licence is payable no later than 31 January 2018.

Note: For information on how the balance of the upfront pre-determined price is paid, see section 7.

46 Payment of the delayed pre-determined price

- (1) If an applicant accepts the offer of a spectrum licence and agrees to pay the delayed pre-determined price for the licence, the ACMA must notify the applicant by registered mail that the ACMA has received the applicant's acceptance.

- (2) The delayed pre-determined price for a spectrum licence is payable in accordance with the following schedule:
- (a) an instalment of:
 - (i) 48.0051 per cent of the gross price for the licence; less
 - (ii) the deposit (if any) paid by the applicant under section 38;(the **first instalment** for the licence) must be paid no later than 31 January 2018;
 - (b) an instalment of 26.6315 per cent of the gross price for the licence, multiplied by 1.05 (the **second instalment** for the licence) must be paid no later than 31 January 2019;
 - (c) an instalment of 25.3634 per cent of the gross price for the licence, multiplied by 1.1025 (the **third instalment** for the licence) must be paid no later than 31 January 2020.

Note: For information on how the delayed pre-determined price is paid, see section 7.

- (3) If an applicant accepts the offer of a spectrum licence and agrees to pay the delayed pre-determined price for the licence, the applicant must give the ACMA the delayed pre-determined price bank guarantee in accordance with subsection 44(6) by the date mentioned in paragraph (2)(a).
- (4) For the purposes of subsection (2), the **gross price** for a licence is worked out as follows:
- (a) identify each lot to be included in the licence;
 - (b) add up the starting price of each such lot.

47 Allocation if offer refused

If an applicant does not accept, in accordance with subsection 44(3), a spectrum licence that has been offered to it, the ACMA may:

- (a) allocate the lots for that spectrum licence by auction under this instrument; or
- (b) remove the lots from the allocation process.

48 Default

- (1) If an applicant:
- (a) accepts the offer of a spectrum licence and agrees to pay the balance of the upfront pre-determined price for the licence; and
 - (b) does not pay the balance of the upfront pre-determined price for the licence in accordance with section 45;
- then:
- (c) the spectrum licence is not allocated to the applicant; and
 - (d) the allocation of spectrum licences under this instrument to other applicants is not affected; and
 - (e) section 80 applies to spectrum that, but for this subsection, would have been allocated to the applicant.
- (2) If an applicant:
- (a) accepts the offer of a spectrum licence and agrees to pay the delayed pre-determined price for the licence; and
 - (b) either, or both:
 - (i) does not pay the first instalment in accordance with section 46; or
 - (ii) does not give the ACMA the delayed pre-determined price bank guarantee in accordance with subsection 44(6);

then:

- (c) the spectrum licence is not allocated to the applicant; and
- (d) the allocation of spectrum licences under this instrument to other applicants is not affected; and
- (e) section 80 applies to spectrum that, but for this subsection, would have been allocated to the applicant.

Note 1: If the applicant fails to pay an instalment other than the first instalment, the applicant may be in breach of the licence condition required to be included in a spectrum licence by section 67 of the Act.

Note 2: If either, or both, the second instalment and third instalment are not paid in accordance with section 46, the ACMA or the Commonwealth may require the authorised deposit-taking institution that has issued the delayed pre-determined price bank guarantee to pay the amount secured by the delayed pre-determined price bank guarantee.

Note 3: See section 90, in relation to the rights of the ACMA and the Commonwealth.

49 Publication of results

The ACMA must announce or publish the following information about the allocation process after the ACMA has notified all relevant applicants under subsections 45(1) and 46(1):

- (a) the names of the persons to whom spectrum licences are to be issued;
- (b) the spectrum allocated to each person;
- (c) the upfront pre-determined price or delayed pre-determined price for each spectrum licence to be issued to each person.

Part 6—Auction procedures

Division 1—Simplified outline

50 Simplified outline of this Part

This Part deals with the procedures to be undertaken in conducting an auction.

The ACMA must register eligible applicants as bidders in the auction. The ACMA must also set the commencement of the auction, and give this information to bidders.

The auction is to be conducted in accordance with the rules in Schedule 1. Bidding is to occur by the auction system made available by the ACMA. However, the auction manager may permit bids to be made by other methods in particular circumstances, and may also allow bids to be made outside of rounds in particular circumstances. The auction manager may also restart, cancel, or take other specified action in relation to, the auction in exceptional circumstances.

During the auction, bidders must not be affiliated with each other, and must report any affiliations with each other, or with a previous successful bidder, to the ACMA.

Division 2—Application of this Part

51 Lots to which this Part applies

- (1) This Part applies in relation to the 10 MHz lot and the 5 MHz lot.
- (2) However, this Part does not apply in relation to a lot if:
 - (a) the lot is included in a spectrum licence that is offered to an applicant under Part 5, and the applicant accepts that offer; or
 - (b) the ACMA decides under section 47 to remove the lot from the allocation process.

Division 3—Registration of bidders

52 Register of bidders

- (1) The ACMA must maintain a register of bidders in the auction in electronic form.
- (2) For each bidder, the register must contain the following:
 - (a) the bidder's name;
 - (b) the bidder's postal address;
 - (c) the bidder's email address;
 - (d) the bidder's telephone number;
 - (e) the name, position, postal address, email address and telephone number of a contact person for the bidder;
 - (f) the bidder's preferred lots, reduced (if required) as a result of subsection 38(4), or as a result of the allocation of spectrum licences under Part 5;
 - (g) the bidder's ACN, ARBN or ABN;
 - (h) the names of the bidder's associates and the nature of their association with the bidder.

- (3) The register may also contain any other information that the ACMA considers necessary or convenient for conducting the auction.
- (4) The ACMA must make changes to the register as soon as practicable after:
 - (a) a bidder tells the ACMA of a change in the bidder's name or contact information, including a change of information for the bidder's contact person; or
 - (b) the ACMA becomes aware that any of the information on the register is not correct.

53 Registration process

- (1) The ACMA must register a person as a bidder in the auction only if:
 - (a) the preference deadline has passed; and
 - (b) the person has:
 - (i) made a valid application under section 29 or 34; and
 - (ii) given the ACMA a completed preference nomination form under section 37; and
 - (iii) paid a deposit or given a deed of financial security (or both) under section 38; and
 - (c) if a deed of financial security is given – the ACMA is satisfied that the person who executed the deed is a person mentioned in subsection 38(6).
- (2) After the preference deadline, the ACMA must, in writing, tell a bidder that the bidder has been registered and may participate in the auction, and give the bidder the following:
 - (a) a copy of the information recorded on the register for the bidder;
 - (b) the ACMA's email address and telephone and fax numbers available for use by bidders;
 - (c) information about accessing and using the auction system;
 - (d) any items required for access;
 - (e) information about how to bid by alternative means if the bidder is unable to submit a bid using the auction system.

Note: Information provided to a bidder under this section for the purpose of participating in the auction is defined as *confidential information* in section 16.

54 Bidder to notify ACMA if register incorrect

If a bidder knows that any of the information about the bidder or the bidder's associates on the register is incorrect, the bidder must immediately give the ACMA the correct information.

55 Preparation for bidding

The ACMA must give each bidder an opportunity to try the auction system before the auction commences.

56 Security of auction

- (1) A bidder must ensure that any items provided to the bidder for the purpose of accessing the auction system are kept secure during the auction period.
- (2) The bidder must notify the ACMA immediately if any item provided to the bidder for the purpose of accessing the auction system is lost or stolen during the auction period.

Division 4—Setting elements of the auction

57 Auction procedures

- (1) The first round of the auction starts on the date and time for that round set by the auction manager under subsection 58(1).
- (2) The rounds of the auction are to be scheduled, and the auction is to be conducted, in accordance with the rules in Schedule 1.

58 First and second rounds

- (1) After the preference deadline, the auction manager must set the start date and time of the first and second rounds of the auction.
- (2) The auction manager must notify bidders of the start date and time of the first and second rounds at least 10 working days before the start date of the first round.

Division 5—Procedures for bids not using the auction system and for exceptional circumstances

59 Auction manager’s discretion to accept bids

- (1) The auction manager may permit a bidder to make a bid during a round by a method other than the auction system if the auction manager is satisfied that the bidder is not able to make a bid for the round using the auction system.

Note: The auction manager may permit a bidder to make a bid by a method that requires the verification that the bidder is making the bid.

- (2) The auction manager may permit a bidder to make a bid for a round after the end time of the round if the auction manager is satisfied that the bidder could not make the bid during the round because of technical or communication problems.
- (3) A bid permitted to be made by the auction manager under subsection (2) is taken to have been made during the round.
- (4) The auction manager must not permit a bidder to make a bid under subsection (2) after information about the outcome of the round has been given to bidders.

Note: See clause 2 of Schedule 1 for details of the information about the outcome of the round that will be given to bidders.

60 Action that auction manager may take in exceptional circumstances

- (1) If the auction manager is satisfied that the auction is affected by exceptional circumstances, the auction manager may:
 - (a) make corrections to:
 - (i) the results of the round of the auction that last ended; and
 - (ii) information received by a bidder after that round; or
 - (b) stop the current round of the auction and restart the round; or
 - (c) cancel the results of one or more auction rounds and restart the auction from the point before those rounds; or
 - (d) cancel the results of all the auction rounds and restart the auction from the first round; or

- (e) stop the auction.
- (2) For this section, exceptional circumstances include:
 - (a) a significant technical difficulty with the auction system; or
 - (b) a breach of the confidentiality obligations in section 17.
- (3) Subsection (2) does not limit what might constitute exceptional circumstances.

Division 6—Affiliations during the auction

61 Affiliation between bidders during auction period not permitted

A bidder must not be affiliated with another bidder during the auction period.

Note: If the ACMA is satisfied that a breach of this provision has occurred the ACMA may take action under section 85.

62 Requirement to report affiliation

If, at any time during the auction period, a bidder believes that it may be an affiliate of another bidder or a previous successful bidder, the bidder must immediately tell the ACMA in writing the identity of the other bidder or the previous successful bidder and give details of the affiliation.

63 Auction continues despite possible affiliation

If the ACMA becomes aware during the auction period that 2 or more bidders may be affiliated, or that a bidder may be affiliated with a previous successful bidder, the auction is to continue and the bidders may continue to participate in the auction.

64 ACMA consideration of affiliation

- (1) If the ACMA has reason to believe that 2 or more bidders are affiliated during the auction period, the ACMA must notify the bidders in writing and tell them the basis on which the ACMA believes the bidders are affiliated.
- (2) If the ACMA has reason to believe that a bidder is affiliated with a previous successful bidder during the auction period, and the bidder had not made this known to the ACMA before the commencement of the auction period, the ACMA must notify the bidder in writing and tell the bidder the basis on which the ACMA believes that the bidder is affiliated with a previous successful bidder.
- (3) If a bidder gave the ACMA information under section 62 about an affiliation with another bidder and the ACMA does not consider that the bidder is affiliated with the other bidder, the ACMA must tell both bidders in writing that the ACMA does not consider them to be affiliated.
- (4) If a bidder gave the ACMA information under section 62 about an affiliation with a previous successful bidder and the ACMA does not consider that the bidder is affiliated with the previous successful bidder, the ACMA must tell the bidder in writing that the ACMA does not consider it to be affiliated with the previous successful bidder.

Part 7—Procedures after auction

Division 1—Simplified outline

65 Simplified outline of this Part

This Part deals with the procedures to be undertaken after conducting the auction.

After the winning bidder for each lot has been identified, the ACMA must notify the unsuccessful bidders and applicants who were not registered as bidders that their confidentiality obligations have ended. The ACMA must give each winning bidder information about the other winning bidders; each winning bidder must then make a statement about whether it is affiliated with any other winning bidder, or a previous successful bidder.

If there is such an affiliation, and if issuing spectrum licences to the winning bidders would breach the allocation limits, the ACMA must not issue spectrum licences to the winning bidders for all the lots won. Instead, the ACMA must only issue spectrum licences that would not result in a breach of the allocation limits.

Each winning bidder will have the choice of paying an upfront winning price, which is the sum of the winning prices for the lots to be included in the spectrum licence, or a delayed winning price, which is the sum of the winning prices for the lots to be included in the spectrum licence plus an additional percentage of that sum, to be paid in three instalments. The first instalment is to be accompanied by a bank guarantee that secures 5 per cent of the second and third instalments.

If a winning bidder fails to pay the upfront winning price or the first auction instalment of the delayed winning price, the winning bidder is not entitled to be issued the licence.

Division 2—Application of this Part

66 This Part applies if an auction is conducted

This Part applies if an auction is conducted under Part 6.

Division 3—Confirmation of auction results

67 Notice and refunds to unsuccessful bidders and withdrawn applicants

- (1) As soon as practicable after the end of the auction period, the ACMA must notify each bidder that is not a winning bidder that:
 - (a) the bidder was unsuccessful in the auction; and
 - (b) the bidder's confidentiality obligations under section 17 have ended.
- (2) If the unsuccessful bidder paid a deposit, the ACMA must refund the payment no later than 6 months after sending the notice under subsection (1) unless the ACMA has made a decision to retain the deposit under section 85.

Note: Section 85 enables the ACMA to retain a deposit if it is satisfied certain breaches of this instrument have occurred.

- (3) As soon as practicable after the end of the auction period, the ACMA must notify each applicant that withdrew, or was taken to have withdrawn, its application that the applicant's confidentiality obligations under section 17 have ended.

68 Winning bidder to make statement about affiliations

- (1) As soon as practicable after the end of the auction period, the ACMA must:
 - (a) give each winning bidder details about the identity of all other winning bidders; and
 - (b) ask the bidder to make a statement whether the bidder is an affiliate of another winning bidder or a previous successful bidder and, if so, identifying the other bidder or the previous successful bidder and giving details of the affiliation.
- (2) The ACMA must state a deadline, at least 10 working days after the date of the request, before which the statement must be received by the ACMA.
- (3) A winning bidder must give the ACMA the statement by the deadline.

Note 1: Giving false or misleading information is a serious offence under section 137.1 of the *Criminal Code*.

Note 2: Section 136.1 of the *Criminal Code* also makes it an offence to make a false or misleading statement in connection with an application for a spectrum licence.

69 Notification that winning bidders are affiliated, or winning bidder is affiliated with previous successful bidder

- (1) If the ACMA is satisfied that 2 winning bidders have become affiliated after the end of the auction period (but were not affiliated during the auction period), the ACMA must notify the bidders in writing and tell them the basis on which the ACMA is satisfied the bidders are affiliated.
- (2) If the ACMA is satisfied that a winning bidder is affiliated with a previous successful bidder, the ACMA must notify the winning bidder in writing and tell the bidder the basis on which the ACMA is satisfied that the bidder and the previous successful bidder are affiliated.

Note: If the previous successful bidder is also a winning bidder, notification is given under subsection (1).

70 Consequences of affiliation between 2 winning bidders

- (1) If:
 - (a) the ACMA notifies 2 winning bidders under subsection 69(1) that it is satisfied the bidders are affiliated (the *affiliated winning bidders*); and
 - (b) the number of lots won by the affiliated winning bidders, when the lot size of those lots is aggregated with a part of the spectrum that either or both the affiliated winning bidders, or the specified group of persons that includes the affiliated winning bidders, may use as a result of the allocation of spectrum licences under the previous allocation determination, exceeds the allocation limits;

the ACMA:

- (c) must not issue spectrum licences to the affiliated winning bidders that would exceed the allocation limits; and
- (d) must not issue spectrum licences to the affiliated winning bidders except in accordance with this section.

Section 70

Note 1: If one of the winning bidders is also a previous successful bidder, any spectrum licences allocated under the previous allocation determination to the previous successful bidder are relevant to an assessment whether issuing spectrum licences to the winning bidders would exceed the allocation limits.

Note 2: As there are only 2 lots, there can only ever be, at most, 2 winning bidders.

- (2) If:
- (a) the ACMA notifies 2 winning bidders under subsection 69(1) that it is satisfied the bidders are affiliated winning bidders; and
 - (b) the ACMA notifies each of those bidders under subsection 69(2) that it is satisfied that those bidders are affiliated with a previous successful bidder; and
 - (c) the previous successful bidder is not also a winning bidder; and
 - (d) the number of lots won by the affiliated winning bidders, when the lot size of those lots is aggregated with the part of the spectrum that the previous successful bidder, or the specified group of persons that includes the previous successful bidder, may use as a result of the allocation of spectrum licences under the previous allocation determination, exceed the allocation limits;
- the ACMA:
- (e) must not issue spectrum licences to the affiliated winning bidders that would exceed the allocation limits; and
 - (f) must not issue spectrum licences to the affiliated winning bidders except in accordance with this section.
- (3) Subject to subsection (9), if the issue of spectrum licences to the affiliated winning bidders for both the 10 MHz lot and the 5 MHz lot would exceed the allocation limits, the bidders may give a direction to the ACMA specifying:
- (a) if issuing a spectrum licence for only the 10 MHz lot to either of the affiliated winning bidders would exceed the allocation limits – which of the bidders is to be issued a spectrum licence for the 5 MHz lot;
 - (b) in any other case – which of the bidders is to be issued a spectrum licence for the 10 MHz lot.
- (4) The direction must be given jointly by the affiliated winning bidders and must be given to the ACMA within 5 working days after the bidders received notification under subsection 69(1).
- (5) Subject to the Act and this instrument, the ACMA must issue a spectrum licence in accordance with that direction, and must not issue a spectrum licence for the other lot to either of the affiliated winning bidders.
- (6) Subject to subsection (9), if the ACMA does not receive a direction within 5 working days, the ACMA may choose at its discretion:
- (a) if issuing a spectrum licence for only the 10 MHz lot to either of the affiliated winning bidders would exceed the allocation limits – which of those bidders is to be issued a spectrum licence for the 5 MHz lot;
 - (b) in any other case – which of those bidders is to be issued a spectrum licence for the 10 MHz lot.
- (7) The ACMA must give written notice to the affiliated winning bidders of its decision under subsection (6).
- (8) Subject to the Act and this instrument, the ACMA must issue a spectrum licence in accordance with its decision under subsection (6), and must not issue a spectrum licence for the other lot to either of the affiliated winning bidders.

- (9) If issuing a spectrum licence for the 5 MHz lot to either of the affiliated winning bidders would exceed the allocation limits, the ACMA must not issue any spectrum licences to those bidders.

Note: If issuing a spectrum licence for the 5 MHz lot to either of the bidders would exceed the allocation limits, then issuing a spectrum licence for the 10 MHz lot, or for both the 5 MHz and 10 MHz lots, would exceed the allocation limits.

- (10) If the ACMA must not issue a spectrum licence for a lot to a bidder under this section, section 80 applies to that lot.

71 Consequences of affiliation with previous successful bidder

- (1) If:
- (a) the ACMA notifies a winning bidder under subsection 69(2) that it is satisfied the bidder is affiliated with a previous successful bidder; and
 - (b) the previous successful bidder is not also a winning bidder; and
 - (c) the number of lots won by the winning bidder, when the lot size of those lots is aggregated with the part of the spectrum that the previous successful bidder, or the specified group of persons that includes the previous successful bidder, may use as a result of the allocation of spectrum licences under the previous allocation determination, exceed the allocation limits;

the ACMA:

- (d) must not issue spectrum licences to the winning bidder that would exceed the allocation limits; and
 - (e) must not issue spectrum licences to the winning bidder except in accordance with this section.
- (2) If:
- (a) the winning bidder won both the 10 MHz lot and the 5 MHz lot; and
 - (b) issuing a spectrum licence for only the 10 MHz lot to the bidder would not exceed the allocation limits;
- the bidder may give a direction to the ACMA specifying either:
- (c) that the bidder wishes to be issued a spectrum licence for the 10 MHz lot; or
 - (d) that the bidder wishes to be issued a spectrum licence for the 5 MHz lot.
- (3) The direction must be given by the winning bidder to the ACMA within 5 working days after the winning bidder received notification under subsection 69(2).
- (4) Subject to the Act and this instrument, the ACMA must issue a spectrum licence in accordance with that direction, and must not issue a spectrum licence for the other lot to the bidder.
- (5) If the ACMA does not receive a direction within 5 working days, subject to the Act and this instrument, the ACMA must issue a spectrum licence for the 10 MHz lot to the bidder.

- (6) If:
- (a) the winning bidder won both the 10 MHz lot and the 5 MHz lot; and
 - (b) issuing a spectrum licence for only the 10 MHz lot to the bidder would exceed the allocation limits;

then:

- (c) the ACMA must not issue a spectrum licence for the 10 MHz lot to the bidder; and

- (d) subject to the Act and this instrument, the ACMA must issue a spectrum licence for the 5 MHz lot to the bidder.
- (7) If:
- (a) the winning bidder won only the 10 MHz lot; and
 - (b) issuing a spectrum licence for only the 10 MHz lot to the bidder would exceed the allocation limits;
- then the ACMA must not issue a spectrum licence for the 10 MHz lot to that bidder.
- (8) If issuing a spectrum licence for the 5 MHz lot to the winning bidder would exceed the allocation limits, the ACMA must not issue a spectrum licence for the 10 MHz lot, or the 5 MHz lot, or both, to that bidder.
- Note: If issuing a spectrum licence for the 5 MHz lot to the bidder would exceed the allocation limits, then issuing a spectrum licence for the 10 MHz lot, or for both the 5 MHz and 10 MHz lots, would exceed the allocation limits.
- (9) If the ACMA must not issue a spectrum licence for a lot to a bidder under this section, section 80 applies to that lot.

Division 4—Payment and issue of spectrum licences

72 The winning price for a lot

The *winning price* for a lot won by a bidder at auction is:

- (a) if there is only one bid on the lot – the starting price for the lot; or
- (b) if there is more than one bid on the lot – the highest bid made for the lot by any bidder, during any round, other than the final high bid.

73 The upfront winning price and the delayed winning price

- (1) The *upfront winning price* for a winning bidder is the sum of the winning prices for the lots won by the bidder at auction.
- (2) The *balance of the upfront winning price* for a winning bidder is the upfront winning price less the amount of any deposit paid by the winning bidder.
- (3) The *delayed winning price* for a winning bidder is the sum of:
 - (a) the deposit paid by the winning bidder for the licence under section 38 (if any);
 - (b) the first auction instalment for the winning bidder;
 - (c) the second auction instalment for the winning bidder; and
 - (d) the third auction instalment for the winning bidder.

Note: The first, second and third auction instalments to be paid in relation to a spectrum licence are calculated by reference to the winning prices for the lots to be included in the licence (see section 75).

Note 2: The sum of the present value of each of the instalments, and of the deposit (if any), is the same as the sum of the winning prices for the lots to be included in the licence, when calculated in accordance with the *Radiocommunications (Spectrum Licence Allocation—Residual 700 MHz Spectrum) Direction 2016*.

74 Sufficient deposit – issue of spectrum licence without further payment

- (1) If, for a winning bidder, the balance of the upfront winning price is less than zero:
 - (a) the ACMA must refund the deposit in excess of the total of the upfront winning price for the winning bidder; and

- (b) the bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the winner without further payment.
- (2) If, for a winning bidder, the balance of the upfront winning price is zero, the bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the winner without further payment.

75 Payment of balance of winning price

- (1) If, for a winning bidder, the balance of the upfront winning price is greater than zero, the ACMA must notify the bidder by registered mail of:
 - (a) the balance of the upfront winning price;
 - (b) the delayed winning price;
 - (c) the dates on which the three instalments for the delayed winning price must be paid;
 - (d) the amounts of those instalments (including the effect of the deposit (if any) paid under section 38 on the first auction instalment); and
 - (e) the date, not earlier than 10 working days after the date of the notice, by which the bidder must give the ACMA written notice whether it elects to pay:
 - (i) the balance of the upfront winning price; or
 - (ii) the delayed winning price.
- (2) If a winning bidder gives the ACMA written notice that it elects to pay the balance of the upfront winning price by the date mentioned in paragraph (1)(e):
 - (a) the ACMA must notify the winning bidder by registered mail that the ACMA has received the bidder's election; and
 - (b) the balance of the upfront winning price must be paid by the winning bidder to the ACMA on behalf of the Commonwealth no later than 31 January 2018.

Note: For information on how the balance of the upfront winning price must be paid, see section 7.

- (3) If a winning bidder gives the ACMA written notice that it elects to pay the delayed winning price by the date mentioned in paragraph (1)(e):
 - (a) the ACMA must notify the winning bidder by registered mail that the ACMA has received the bidder's election; and
 - (b) the delayed winning price must be paid by the winning bidder to the ACMA on behalf of the Commonwealth in accordance with the following schedule:
 - (i) an instalment of:
 - (A) 48.0051 per cent of the gross auction price; less
 - (B) the deposit (if any) paid by the bidder under section 38;(the **first auction instalment** for the winning bidder) must be paid no later than 31 January 2018;
 - (ii) an instalment of 26.6315 per cent of the gross auction price, multiplied by 1.05 (the **second auction instalment** for the winning bidder) must be paid no later than 31 January 2019;
 - (iii) an instalment of 25.3634 per cent of the gross auction price, multiplied by 1.1025 (the **third auction instalment** for the winning bidder) must be paid no later than 31 January 2020; and
 - (c) the winning bidder must give the ACMA the delayed winning price bank guarantee in accordance with subsection (7) by the date mentioned in subparagraph (b)(i).

Note: For information on how the delayed winning price must be paid, see section 7.

- (4) If the ACMA becomes aware that a notice under subsection (1) contains a material error, the ACMA must give the winning bidder a revised notice by registered mail.
- (5) If a revised notice is given under subsection (4):
- (a) the ACMA must include in the revised notice a date, not later than 15 working days after the date of the revised notice, by which the bidder may give the ACMA notice whether it has elected to pay the balance of the upfront winning price or the delayed winning price; and
 - (b) subsections (2) and (3) apply as if the date mentioned in paragraph (1)(e) were the date included in the revised notice; and
 - (c) any previous notice given by the winning bidder under subsection (2) or (3) is of no effect.
- (6) If a winning bidder does not give the ACMA written notice whether it elects to pay the balance of the upfront winning price or the delayed winning price by the date mentioned in paragraph (1)(e), the bidder is deemed to have given the ACMA written notice that it elects to pay the balance of the upfront winning price, under subsection (2).
- (7) If a winning bidder gives the ACMA written notice that it elects to pay the delayed winning price by the date mentioned in paragraph (1)(e), the winning bidder is not entitled to be issued a spectrum licence unless the winning bidder gives the ACMA an irrevocable bank guarantee securing the secured auction amount, issued by an Australian-owned authorised deposit-taking institution (as defined in the *Banking Act 1959*) which is a bank, in a form approved by the ACMA (***delayed winning price bank guarantee***), no later than the date mentioned in subparagraph (2)(b)(i).
- Note 1: If the winning bidder fails to pay an instalment other than the first auction instalment, the winning bidder may be in breach of the licence condition required to be included in a spectrum licence by section 67 of the Act.
- Note 2: If either, or both, the second instalment and third instalment are not paid in accordance with subsection 75(3), the ACMA or the Commonwealth may require the authorised deposit-taking institution that has issued the delayed winning price bank guarantee to pay the amounts secured by the delayed winning price bank guarantee.
- (8) If a spectrum licence is issued to a winning bidder in accordance with subsection 76(2), each of the first auction instalment, the second auction instalment and the third auction instalment is not refundable in any circumstances.
- (9) If a delayed winning price bank guarantee is given to the ACMA by email or fax before the date mentioned in subsection (7), the original guarantee must be received by the ACMA no later than 3 working days after that date (or, if the ACMA agrees to a later time, the agreed time) for the guarantee to be taken to have been given to the ACMA.
- (10) For the purposes of subsection (3), the ***gross auction price*** for a winning bidder is worked out as follows:
- (a) identify each lot to be included in the licence;
 - (b) add up the winning price of each such lot.
- (11) For the purposes of subsection (7), the ***secured auction amount*** is:
- (a) in the period commencing on the date mentioned in subparagraph (3)(b)(i) and ending on the date (if any) the second auction instalment is paid – 5 per cent of the sum of the second auction instalment and the third auction instalment;
 - (b) in the period commencing on the day after the date the second auction instalment is paid and ending on the date (if any) the third auction instalment is paid – 5 per cent of the third auction instalment.

76 Issue of spectrum licence

- (1) If a winning bidder:
- (a) elects to pay the balance of the upfront winning price; and
 - (b) pays the balance of the upfront winning price in accordance with subsection 75(2);
- the winning bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder.

Note: For the issue of spectrum licences, see section 62 of the Act.

- (2) If a winning bidder:
- (a) elects to pay the delayed winning price; and
 - (b) pays the first auction instalment in accordance with subparagraph 75(3)(b)(i); and
 - (c) gives the ACMA the delayed winning price bank guarantee in accordance with subsection 75(7);

the winning bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder.

Note 1: If the winning bidder fails to pay an instalment other than the first auction instalment, the winning bidder may be in breach of the licence condition required to be included in a spectrum licence by section 67 of the Act.

Note 2: If either, or both, the second instalment and third instalment are not paid in accordance with subsection (3), the ACMA or the Commonwealth may require the authorised deposit-taking institution that has issued the delayed winning price bank guarantee to pay the amount secured by the delayed winning price bank guarantee.

Note 3: See section 90, in relation to the rights of the ACMA and the Commonwealth.

Note 4: For the issue of spectrum licences, see section 62 of the Act.

77 Default

- (1) If a winning bidder:
- (a) elects to pay the balance of the upfront winning price; and
 - (b) does not pay the balance of the upfront winning price in accordance with subsection 75(2);
- then:
- (c) the spectrum licence is not allocated to the winning bidder; and
 - (d) the allocation of spectrum licences under this instrument to other applicants is not affected; and
 - (e) section 80 applies to spectrum that, but for this subsection, would have been included in a spectrum licence allocated to the winning bidder.

- (2) If a winning bidder:
- (a) elects to pay the delayed winning price; and
 - (b) either, or both:
 - (i) does not pay the first auction instalment in accordance with subparagraph 75(3)(b)(i); or
 - (ii) does not give the ACMA the delayed winning price bank guarantee in accordance with subsection 75(7);

then:

- (c) the spectrum licence is not allocated to the winning bidder; and
- (d) the allocation of spectrum licences under this instrument to other applicants is not affected; and

- (e) section 80 applies to spectrum that, but for this subsection, would have been included in a spectrum licence allocated to the winning bidder.

Note 1: If the applicant fails to pay an instalment other than the first auction instalment, the applicant may be in breach of the licence condition required to be included in a spectrum licence by section 67 of the Act.

Note 2: If either, or both, the second instalment and third instalment are not paid in accordance with subsection 75(3), the ACMA or the Commonwealth may require the authorised deposit-taking institution that has issued the delayed pre-determined price bank guarantee to pay the amount secured by the delayed pre-determined price bank guarantee.

Note 3: See section 90, in relation to the rights of the ACMA and the Commonwealth.

78 Publication of auction results

The ACMA must announce or publish the following information about the auction after the end of the auction period:

- (a) the names of winning bidders;
- (b) the spectrum allocated to each winning bidder;
- (c) the winning price for each lot won by each winning bidder.

Part 8—Miscellaneous

79 Simplified outline of this Part

This Part sets out rules that apply throughout and after the allocation process, including the following rules.

The ACMA may give notices to applicants or bidders, requiring the production of information or documents.

The ACMA may provide information or documents obtained in the course of the allocation process to the ACCC.

In relation to some breaches of the rules set out in this instrument, the ACMA may make a decision by which it retains a deposit paid by, or enforces the deed of financial security provided by, an applicant or bidder. In this case, the applicant or bidder is not entitled to be issued a spectrum licence. The applicant or bidder may apply to the Federal Court for return of the deposit or the amount paid as a result of enforcing the deed of financial security.

80 Unallocated spectrum

Parts of the spectrum that are offered at auction or for a pre-determined price but not allocated may be later offered for allocation by a procedure to be determined by the ACMA.

Note: The ACMA may make determinations under section 60 of the Act about allocations by auctions or by other procedures.

81 Bidders must not misuse auction system

- (1) A bidder must only access and use the auction system in accordance with the information about access and use provided under section 53.
- (2) A bidder must not attempt to interfere with, disrupt or damage the auction system.
- (3) A bidder must not attempt to use the auction system to breach a law of the Commonwealth.

82 ACMA may obtain information from applicants and bidders

- (1) If the ACMA has reason to believe that an applicant or bidder has information or documents that are relevant to the performance of any of the ACMA's functions or the exercise of its powers under this instrument, the ACMA may, by written notice, require the applicant or bidder:
 - (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents.

Note: If a requirement in a notice given under this subsection is breached, the ACMA may take action under section 85.

- (2) The ACMA may vary a notice given under subsection (1).

83 Use of information and documents by ACMA

- (1) The ACMA may use information or documents it obtains in the performance of its functions under this instrument:
 - (a) for the purposes of this instrument, including disclosing or publishing information or documents as provided for in this instrument; and
 - (b) in relation to a spectrum licence issued or to be issued as a result of the allocation process.
- (2) The ACMA may retain possession of a document or other item given to the ACMA for the purposes of this instrument for as long as necessary for the performance of the ACMA's functions and exercise of its powers under this instrument or the Act.
- (3) The ACMA may disclose information or documents in accordance with Part 7A of the *Australian Communications and Media Authority Act 2005* or as otherwise authorised by law.

84 ACMA to provide information to ACCC on request

- (1) The ACCC may make a request to the ACMA for information in relation to the allocation process or in relation to an applicant or bidder.
- (2) The ACMA must provide the requested information to the ACCC if the ACMA has the information.
- (3) Without limiting subsection (1), information that the ACCC may request includes the following:
 - (a) completed application forms;
 - (b) completed preference nomination forms;
 - (c) deeds of confidentiality;
 - (d) information about an applicant's associates and affiliations;
 - (e) information about any breaches of confidentiality obligations;
 - (f) information about the outcomes of procedures in Part 5;
 - (g) information about bidding during the auction;
 - (h) information about the outcomes of the procedures in Part 7.

85 Retention of deposit or enforcement of deed for breach of procedures

- (1) The ACMA on behalf of the Commonwealth may retain a deposit made by an applicant or bidder, or enforce a deed of financial security given by an applicant or bidder, if:
 - (a) the ACMA is satisfied that:
 - (i) the applicant or bidder, or a related person of the applicant or bidder, breached a provision of this instrument; and
 - (ii) the breach affected, or may have affected, the outcome of the allocation process; or
 - (b) the applicant failed to pay the balance of the upfront pre-determined price as required under subsection 45(2); or
 - (c) the applicant failed to pay the first instalment as required under paragraph 46(2)(a); or
 - (d) the applicant failed to give the ACMA the delayed pre-determined price bank guarantee in accordance with subsection 44(6); or
 - (e) the ACMA is satisfied that the bidder breached section 61; or

- (f) the bidder is a winning bidder who failed to give the statement required under section 68; or
 - (g) the bidder is a winning bidder who failed to pay the balance of the upfront winning price as required under paragraph 75(2)(b); or
 - (h) the bidder is a winning bidder who failed to pay the first auction instalment as required under subparagraph 75(3)(b)(i); or
 - (i) the bidder is a winning bidder who failed to give the ACMA the delayed winning price bank guarantee in accordance with subsection 75(7); or
 - (j) the ACMA is satisfied that the applicant or bidder, or a related person of the applicant or bidder, breached the confidentiality obligations under section 17 after the end of the auction period (but before the confidentiality obligations came to an end); or
 - (k) the applicant or bidder failed to comply with a requirement in a notice given under subsection 82(1).
- (2) The ACMA must notify the applicant or bidder, in writing, of a decision under subsection (1) and the nature of the breach or failure before the later of:
- (a) six months after:
 - (i) if notice was given to the applicant under subsection 45(1) or 46(1) – the day the notice was given; or
 - (ii) in any other case – the end of the auction period; and
 - (b) 6 months after the day on which the breach of failure mentioned in subsection (1) occurred.
- (3) A deposit retained under this section, or an amount obtained through enforcement of a deed of financial security, is forfeited to the Commonwealth unless the Federal Court orders the return of the amount under section 88.

86 Effect of retention on allocation to applicants for pre-determined price

If the ACMA makes a decision under subsection 85(1) in relation to an applicant notified under subsection 45(1) or 46(1):

- (a) despite subsections 44(4) and 44(5), the ACMA must not issue a spectrum licence to the applicant; and
- (b) section 80 applies to spectrum that, but for this subsection, would have been included in a spectrum licence allocated to the applicant.

87 Effect of retention on winning bidders

If the ACMA makes a decision under subsection 85(1) in relation to a winning bidder:

- (a) despite subsections 70(5), 70(8), 71(4), 71(5) and 71(6), and sections 74 and 76, the ACMA must not issue a spectrum licence to the winning bidder; and
- (b) section 80 applies to spectrum that, but for this subsection, would have been included in a spectrum licence allocated to the winning bidder.

88 Application to Federal Court for return of retained amount

- (1) An applicant or bidder who has been notified by the ACMA under subsection 85(2) may, within one year of receiving the notice, apply to the Federal Court for return of all or part of a deposit or an amount secured by a deed of financial security.
- (2) On application, the Federal Court may:

- (a) if the Court is not satisfied that the applicant or bidder committed the breach or failure identified in the notice given by the ACMA – order the return of all the amount retained by the ACMA; or
 - (b) if the Court is satisfied that the applicant or bidder committed the breach or failure, but considers that it would be disproportionate for the full amount to be retained – order the return of part of the amount retained by the ACMA.
- (3) This section does not enable the Federal Court to order that a spectrum licence be issued to an applicant or bidder.
- (4) This section does not remove any existing jurisdiction of a court.

89 Liability of ACMA, auction manager and the Commonwealth

Neither the ACMA, the auction manager nor the Commonwealth is liable to pay damages or cost arising from an act or omission of any person in relation to the allocation procedures set out in this instrument.

90 Other rights not affected

This instrument does not limit any other right of action or remedy which the ACMA or the Commonwealth has against a person.

91 Auction manager may delegate functions and powers

The auction manager may delegate any of the auction manager's functions and powers under this instrument.

Schedule 1—Auction rules

(subsections 4(1) and 57(2))

Part 1—Auction arrangements

1 Schedule for rounds of the auction

- (1) Rounds of the auction must start and end between 9.00 am and 5.00 pm on working days, other than a recess day.
- (2) Subject to paragraph 2(3)(a) of this Schedule, the scheduling of rounds between those times is at the auction manager's discretion.
- (3) There is no minimum or maximum length for a round, and no minimum or maximum length for the interval between rounds.
- (4) There is no upper or lower limit on the number of rounds per day.
- (5) Subject to section 58, the auction system will indicate the anticipated schedule of rounds for a given day at least 1 hour before the start time of the first round of the day. However, the auction manager may, at any time, modify the schedule of rounds. If this occurs, the auction manager must inform all bidders of the change as soon as practicable.

2 Rounds of the auction

- (1) A round of the auction will be for bids on a single lot.
- (2) The first round of the auction, and, subject to subclause (3), each subsequent round of the auction, will be for bids on the 10 MHz lot.
- (3) If a round is the final round for bids on the 10 MHz lot:
 - (a) there must be at least one recess day between that round and the next round of the auction; and
 - (b) the next round of the auction, and each subsequent round of the auction, will be for bids on the 5 MHz lot.

Note: For the final round for bids on the 10 MHz lot, see clause 11.

- (4) During a round, each bidder may make a bid on the relevant lot, if it is one of the bidder's preferred lots.
- (5) Before the start time of each round for bids on the 10 MHz lot, the auction manager must provide the following information to each bidder who nominated the 10 MHz lot as a preferred lot, using the auction system:
 - (a) the start time of the round;
 - (b) the end time of the round;
 - (c) the specified price that will apply to the 10 MHz lot in the round;
 - (d) for each round other than the first round, the specified price that applied to the 10 MHz lot in the previous round;
 - (e) the total number of bidders that have nominated the 10 MHz lot as a preferred lot;
 - (f) the number of bidders remaining in the auction for the 10 MHz lot after the end of the previous round;
 - (g) any other information the ACMA considers necessary or convenient to conduct the auction.

- (6) After each round for bids on the 10 MHz lot, the auction manager must provide the following information to each bidder who nominated the 10 MHz lot as a preferred lot, using the auction system:
 - (a) the bid made by the bidder during the round (if any);
 - (b) for each round other than the final round for the 10 MHz lot— the number of bidders remaining in the auction for the lot after the round;
 - (c) if, as a result of the round, the bidder is the winning bidder for the 10 MHz lot – the winning price for that lot;
 - (d) any other information the ACMA considers necessary or convenient to conduct the auction.

- (7) Before the start time of each round for bids on the 5 MHz lot, the auction manager must provide the following information to each bidder who nominated the 5 MHz lot as a preferred lot, using the auction system:
 - (a) the start time of the round;
 - (b) the end time of the round;
 - (c) the specified price that will apply to the 5 MHz lot in the round;
 - (d) for each round other than the first round, the specified price that applied to the 5 MHz lot in the previous round;
 - (e) the total number of bidders that have nominated the 5 MHz lot as a preferred lot;
 - (f) the number of bidders remaining in the auction for the 5 MHz lot after the end of the previous round;
 - (g) any other information the ACMA considers necessary or convenient to conduct the auction.

- (8) After each round for bids on the 5 MHz lot, the auction manager must provide the following information to each bidder who nominated the 5 MHz lot as a preferred lot, using the auction system:
 - (a) the bid made by the bidder during the round (if any);
 - (b) for each round other than the final round for the 5 MHz lot— the number of bidders remaining in the auction for the lot after the round;
 - (c) if, as a result of the round, the bidder is the winning bidder for the 5 MHz lot – the winning price for that lot;
 - (d) any other information the ACMA considers necessary or convenient to conduct the auction.

3 Recess days

- (1) The auction manager may declare a day to be a *recess day* (whether or not the day is a working day).
- (2) Before declaring a recess day, other than the recess day or days referred to in paragraph 2(3)(a) of this Schedule, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received.

Note: The auction manager must declare at least one recess day after the final round for bids on the 10 MHz lot; see paragraph 2(3)(a) of this Schedule.

- (3) If the auction manager decides to declare a day to be a recess day, the auction manager must tell all bidders of this.

Part 2—Bidding in the auction

4 When bidder cannot make a bid on a lot

- (1) If, in a round for bids on the 10 MHz lot:
- (a) a bidder does not make a bid on the 10 MHz lot; or
 - (b) a bidder is an exit bidder in the circumstances set out in clause 10;
- the bidder cannot make a bid on the 10 MHz lot in any subsequent round of the auction.

Note 1: A bidder is taken to make a bid in the circumstances specified in clause 8.

Note 2: An exit bid made by the bidder may still be the final high bid for the 10 MHz lot.

- (2) If, in a round for bids on the 5 MHz lot:
- (a) a bidder does not make a bid on the 5 MHz lot; or
 - (b) a bidder is an exit bidder in the circumstances set out in clause 10;
- the bidder cannot make a bid on the 5 MHz lot in any subsequent round of the auction.

Note 1: A bidder is taken to make a bid in the circumstances specified in clause 8.

Note 2: An exit bid made by the bidder may still be the final high bid for the 5 MHz lot.

- (3) If, for a bidder, both of the following apply:
- (a) the bidder is the winning bidder for the 10 MHz lot; and
 - (b) the aggregate of:
 - (i) the lot size of the 10 MHz lot; and
 - (ii) the lot size of the 5 MHz lot; and
 - (ii) the part of the spectrum (if any) that the winning bidder, or the specified group of persons that includes the winning bidder, may use as a result of the allocation of spectrum licences under the previous allocation determination; exceeds the allocation limits;
- the bidder cannot make a bid on the 5 MHz lot.

Note: The allocation limits may prevent a particular bidder from winning both the 10 MHz and the 5 MHz lots, but may not prevent that bidder from winning either of those lots. In this case, if the bidder is the winning bidder for the 10 MHz lot, and that bidder had nominated both lots as its preferred lots, the bidder will not be able to make a bid on the 5 MHz lot. In accordance with clause 2, the 10 MHz lot is being auctioned before the 5 MHz lot.

5 Starting price and specified price

- (1) A bid on a lot below the amount of the starting price for that lot will not be accepted.

Note: For starting prices, see subsection 28(1). For the validity of bids, see clause 9.

- (2) The **specified price** for the 10 MHz lot in the first round of the auction is the sum of:
- (a) the starting price for the 10 MHz lot; and
 - (b) the bid increment percentage for the 10 MHz lot multiplied by that starting price; rounded up to the next thousand.
- (3) Subject to subsection (4), the **specified price** for the 10 MHz lot in a round of the auction, other than the first round, is the sum of:
- (a) the specified price for the 10 MHz lot in the previous round; and
 - (b) the bid increment percentage for the 10 MHz lot multiplied by that specified price; rounded up to the next thousand.

- (4) If a round is the final round for bids on the 10 MHz lot, there is no *specified price* for the 10 MHz lot in any later round of the auction.
- (5) The *specified price* for the 5 MHz lot in the first round for bids on the 5 MHz lot is the sum of:
 - (a) the starting price for the 5 MHz lot; and
 - (b) the bid increment percentage for the 5 MHz lot multiplied by that starting price; rounded up to the next thousand.
- (6) The *specified price* for the 5 MHz lot in a round of the auction after the first round for bids on the 5 MHz lot is the sum of:
 - (a) the specified price for the 5 MHz lot in the previous round; and
 - (b) the bid increment percentage for the 5 MHz lot multiplied by that specified price; rounded up to the next thousand.

6 Changing bid increment percentage to vary specified prices

- (1) The auction manager may, at any time during the auction, change the bid increment percentage to vary the specified price for a lot in a round.

Note: For the bid increment percentage, see section 36.
- (2) Before doing this, the auction manager must:
 - (a) tell bidders of the proposed change; and
 - (b) ask bidders for their comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received on the proposal.
- (3) The auction manager must notify all bidders of the change before the round when the change takes effect.

7 General rules about bidding

- (1) A bidder:
 - (a) may only make bids on the preferred lots that the bidder nominated in its preference nomination form; and
 - (b) despite paragraph (a), must not make a bid on a lot if clause 4 or clause 10 provides that the bidder cannot make a bid on the lot.
- (2) Except where subsection 59(1) applies, a bidder's bid is taken to have been made in a round when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 59(1) allows the auction manager to permit a bid to be made otherwise than by the auction system, in certain circumstances.
- (3) A bidder may change, delete or replace a bid in the auction system as often as desired during a round. The bid that will be treated as binding for a bidder, and will be taken to be the bid made by the bidder in the round, is the bid in the auction system at the end time of the round.

Note: A bidder is taken to make a bid in the circumstances specified in clause 8. The definition of *bid* in section 4 of this instrument includes a bid that is taken to be made.

8 Continue bid made at greater than specified price

- (1) A continue bid made on a lot in a round of the auction (the *relevant round*) that is for an amount (the *advance price*) that is equal to or greater than the specified price for the lot in the relevant round will also constitute:
 - (a) in any round after the relevant round where the advance price is greater than or equal to the specified price for the lot in that round – a continue bid made on that lot in that round; and
 - (b) in the first round after the relevant round in which the advance price is less than the specified price for the lot in that round – an exit bid made on that lot in that round.

Note: The definition of *bid* in section 4 of this instrument includes a bid that is taken to be made.

Example: During round N , the specified price for a lot is \$100,000. The bid increment percentage is 10%.

If a bidder makes a bid of \$130,000 on the lot in round N , then:

- (a) for round $N+1$, the specified price is \$110,000, and the bid is taken to be a continue bid for round $N+1$;
 - (b) for round $N+2$, the specified price is \$121,000, and the bid is taken to be a continue bid for round $N+2$;
 - (c) for round $N+3$, the specified price is \$134,000, and the bid is taken to be an exit bid for round $N+3$.
- (2) Subsection (1) is subject to any other bid made by a bidder on the lot in a round after the relevant round.

9 Validity of bids

A bid in a round is valid if all of the following apply to the bid:

- (a) either:
 - (i) if the round is the first round for bids on the 10 MHz lot – the bid is not less than the starting price for the 10 MHz lot; or
 - (ii) if the round is the first round for bids on the 5 MHz lot – the bid is not less than the starting price for the 5 MHz lot; or
 - (iii) if the round is for bids on the 10 MHz lot, other than the first round for bids on the 10 MHz lot – the bid is not less than the specified price of the 10 MHz lot in the previous round; or
 - (iv) if the round is for bids on the 5 MHz lot, other than the first round for bids on the 5 MHz lot – the bid is not less than the specified price of the 5 MHz lot in the previous round;
- (b) it is received by the auction system between the start time and end time of the round, subject to subsection 59(2);
- (c) it is a multiple of one thousand.

Note 1: The effect of paragraph (a) is that, to be valid, a bid must be either a continue bid or an exit bid.

Note 2: The definition of *bid* in section 4 of this instrument includes a bid that is taken to be made.

10 Exit bids – exclusion from further participation

If, in a round, both of the following occur:

- (a) a bidder (the *exit bidder*) makes an exit bid for a lot (whether or not any other bidder also makes an exit bid for the lot); and
 - (b) two or more bidders make a continue bid for the lot;
- the exit bidder cannot make a bid on the lot in any subsequent round.

Note 1: For a round where the only bids on a lot are exit bids, or only one continue bid is made in addition to any exit bids, see Part 3 of Schedule 1.

Note 2: The definition of *bid* in section 4 of this instrument includes a bid that is taken to be made.

Part 3—Determining the winning bidder for a lot

11 Final round for bids on the 10 MHz lot and final round of the auction

- (1) The *final round for bids on the 10 MHz lot* is the first round where one of the following applies:
- one bid is made for the 10 MHz lot;
 - one or more exit bids, and no more than one continue bid, are made for the 10 MHz lot;
 - no bids are made for the 10 MHz lot.

Note 1: For general rules about bidding, see clauses 7, 8 and 9.

Note 2: The round after the final round for bids on the 10 MHz lot is the first round for bids on the 5 MHz lot; see paragraph 2(3)(b) of this Schedule.

Note 3: The definition of *bid* in section 4 of this instrument includes a bid that is taken to be made.

- (2) The *final round of the auction* is the first round where one of the following applies:
- one bid is made for the 5 MHz lot;
 - one or more exit bids, and no more than one continue bid, are made for the 5 MHz lot;
 - no bids are made for the 5 MHz lot.

Note 1: For general rules about bidding, see clauses 7, 8 and 9.

Note 2: The definition of *bid* in section 4 of this instrument includes a bid that is taken to be made.

- (3) For the 10 MHz lot, the *final high bid* is:
- if one bid was made on the 10 MHz lot in the final round for bids on the 10 MHz lot – that bid;
 - if one continue bid was made on the 10 MHz lot in the final round for the 10 MHz lot – that continue bid;
 - if each of the following applies:
 - no continue bid was made on the 10 MHz lot in the final round for bids on the 10 MHz lot; and
 - two or more exit bids were made on the 10 MHz lot in the final round for the 10 MHz lot; and
 - one of those exit bids (the *high exit bid*) was greater than each of the other exit bids;
– the high exit bid;
 - in any other case – worked out in accordance with clause 12.

- (4) For the 5 MHz lot, the *final high bid* is:
- if one bid was made on the 5 MHz lot in the final round of the auction – that bid;
 - if one continue bid was made on the 5 MHz lot in the final round of the auction – that continue bid;
 - if each of the following applies:
 - no continue bid was made on the 5 MHz lot in the final round of the auction; and

- (ii) two or more exit bids were made on the 5 MHz lot in the final round of the auction; and
 - (iii) one of those exit bids (the **high exit bid**) was greater than each of the other exit bids;
 - the high exit bid;
 - (d) in any other case – worked out in accordance with clause 13.
- (5) Subject to subclauses 12(2) and 13(2), the bidder who made the final high bid for a lot is the **winning bidder** for that lot.

Note: An exit bid may have been a continue bid in a previous round of the auction, in accordance with clause 8. The definition of **bid** in section 4 of this instrument includes a bid that is taken to be made.

12 Tiebreaker for 10 MHz lot

- (1) This section applies in relation to the 10 MHz lot if:
- (a) no continue bid was made on the 10 MHz lot in the final round for bids on the 10 MHz lot;
 - (b) two or more exit bids were made on the 10 MHz lot in the final round for bids on the 10 MHz lot;
 - (c) of those exit bids:
 - (i) two or more of those exit bids were equal (the **tied exit bids**); and
 - (ii) the tied exit bids were greater than each other exit bid mentioned in paragraph (b).
- (2) Where this section applies, the **winning bidder** for the 10 MHz lot will be selected from the bidders who made the tied exit bids by pseudorandom selection. The pseudorandom selection must be conducted before the first round for bids on the 5 MHz lot.
- (3) For the purposes of paragraph 11(3)(d) of this Schedule, the **final high bid** for the 10 MHz lot is the amount of the last bid made by the winning bidder.

13 Tiebreaker for 5 MHz lot

- (1) This section applies in relation to the 5 MHz lot if:
- (a) no continue bid was made on the 5 MHz lot in the final round of the auction;
 - (b) two or more exit bids were made on the 5 MHz lot in the final round of the auction;
 - (c) of those exit bids:
 - (i) two or more of those exit bids were equal (the **tied exit bids**); and
 - (ii) the tied exit bids were greater than each other exit bid mentioned in paragraph (b).
- (2) Where this section applies, the **winning bidder** for the 5 MHz lot will be selected from the bidders who made the tied exit bids by pseudorandom selection.
- (3) For the purposes of paragraph 11(4)(d) of this Schedule, the **final high bid** for the 5 MHz lot is the amount of the last bid made by the winning bidder.

Part 4—Bringing the auction to a close

14 Close of the auction

- (1) The auction will close immediately after:

Schedule 1—Auction rules

- (a) if clause 13 applies in relation to the 5 MHz lot – the pseudorandom selection mentioned in subclause 13(2) occurs; or
 - (b) in any other case – the final round of the auction.
- (2) After the auction closes, the auction manager must tell each bidder, using the auction system, that the auction has closed.

Schedule 2—Parts of the spectrum

(subsection 4(1))

Part 1—700 MHz band and residual 700 MHz band

1 The 700 MHz band and residual 700 MHz band

- (1) The parts of the spectrum in the *700 MHz band* are the following frequency ranges:
 - (a) 703 MHz to 748 MHz; and
 - (b) 758 MHz to 803 MHz;in the designated area.
- (2) The parts of the spectrum in the *residual 700 MHz band* are the following frequency ranges:
 - (a) 733 MHz to 748 MHz (the *lower band*); and
 - (b) 788 MHz to 803 MHz (the *upper band*);in the designated area.

Part 2—Lots

2 The 10 MHz lot and the 5 MHz lot

- (1) The *10 MHz lot* represents the following frequency ranges:
 - (a) 738 MHz to 748 MHz; and
 - (b) 793 MHz to 803 MHz;in the designated area.
- (2) The *5 MHz lot* represents the following frequency ranges:
 - (a) 733 MHz to 738 MHz; and
 - (b) 788 MHz to 793 MHz;in the designated area.

Schedule 3—Allocation limits

(section 10)

The allocation limits are:

- (a) 20 MHz of spectrum available in the frequency range 703 MHz to 748 MHz in the designated area; and
- (b) 20 MHz of spectrum available in the frequency range 758 MHz to 803 MHz in the designated area.

Note: The frequency range 703 MHz to 748 MHz includes the lower band, and the frequency range 758 MHz to 803 MHz includes the upper band.