

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017* (**the Determination**) under sections 60 and 294 of the Radiocommunications Act 1992 (**the Act**).

Under section 60, the ACMA must determine, in writing, the procedures to be applied in allocating spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, and under section 294, the ACMA may make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences, and specifying the times when those charges are payable.

### **Purpose and operation of the Determination**

The Determination sets out the procedures to be applied in allocating spectrum licences in specific parts of the following frequency ranges:

- (a) 1725–1785 MHz and 1820–1880 MHz (**the 1800 MHz band**);
- (b) 1920–1980 MHz and 2110–2170 MHz (**the 2 GHz band**);
- (c) 2302–2400 MHz (**the 2.3 GHz band**);
- (d) 3439–3575 MHz (**the 3.4 GHz band**).

These licences will be allocated using the Simple Clock Auction (**the SCA**) methodology in a sequential auction. The SCA format uses a simple ascending-bid method, formalising the process by which prices increase from round to round, and how much time bidders are given to think about their bids in between rounds. In this SCA auction, the lots will be offered concurrently within a stage and there will be 3 stages.

If only one person applies for a particular part of the spectrum, the Determination allows the ACMA to allocate a licence or licences to that person without conducting an auction.

The licences will be auctioned in 3 stages:

- (a) licences in the 1800 MHz band, and some licences in the 2 GHz band, will be auctioned concurrently in the first stage;
- (b) the remainder of the licences in the 2GHz band will be auctioned concurrently in the second stage;
- (c) the licences in the 2.3 GHz and 3.4 GHz bands will be auctioned concurrently in the third stage.

The Determination also fixes the spectrum access charges payable by the persons to whom such licences are allocated, by reference to the winning bids at the auction (or, if there is no auction, by reference to starting prices set by the ACMA). If the lot is won at auction, the highest bidder in the final round wins and pays the amount of the second-highest bid (this is the defining feature of a “second-price auction”). This ensures that the winner never pays more than necessary to win, which encourages ‘true value’ bidding.

This Determination is for an auction in relation to spectrum covered by spectrum licences that were unsold after previous auctions, or by spectrum licences that have expired and not been re-issued.

#### *1800 MHz – allocation in 2015*

In 2015, the Minister for Communications, the Hon. Malcolm Turnbull, made the *Radiocommunications (Spectrum Re-allocation – Regional 1800 MHz Band) Declaration 2015 (the 1800 MHz re-allocation declaration)*. As a result, the ACMA offered spectrum licences in the 1800 MHz band for allocation in 12 separate geographic regions (**the 1800 MHz auction**). In each region, 12 separate first product lots were available in a paired (2 x 5 MHz) configuration. Each lot represented 5 MHz in the lower part of the band (1725–1785 MHz) and 5 MHz in the upper part of the band (1820–1880 MHz). The ACMA also allocated licences for one lot each in North Queensland, regional South Australia and Adelaide.

The Minister for Communications, the Hon. Malcolm Turnbull, gave the ACMA a direction, the *Radiocommunications (Spectrum Licence Limits – Regional 1800 MHz Band) Direction 2015 (the 1800 MHz spectrum limits direction)*, under subsection 60(10) of the Act, imposing limits on the spectrum licences that could be allocated to any one person: no bidder could be allocated licences for more than 25 MHz in part of the 1800 MHz band in regional Australia.

The 1800 MHz auction commenced on 30 November 2015 and concluded in February 2016. Optus, Telstra, TPG and Vodafone all were allocated spectrum licences as a result of this auction. A table of results is available on the ACMA’s website.

<http://www.acma.gov.au/theACMA/auction-summary-1800-mhz>

Spectrum licences issued after that auction will all expire on 17 June 2028. The 1800 MHz band in Australia’s major cities is mainly used to provide 4G telecommunications services. The 1800 MHz auction was limited to regional areas (and one lot in Adelaide), and allocated licences to current mobile broadband service providers. It is anticipated that improvements to 4G telecommunications services will be extended across regional Australia as a result of the 1800 MHz auction.

After the 1800 MHz auction, there were 5 unsold lots. They represent spectrum in Dubbo (2 x 5 MHz), Maryborough (2 x 5 MHz), regional Western Australia (2 x 5 MHz), Tasmania (2 x 5 MHz) and Mackay (2 x 10 MHz) (collectively, the **1800 MHz lots**). Licences for this spectrum will be allocated in accordance with the Determination.

#### *2 GHz band – allocation in 2001 and re-issue in 2017*

The Australian Communications Authority (ACA) allocated spectrum licences in the 2 GHz band using a simultaneous multi-round ascending auction in March 2001 (**the 2 GHz auction**). Although the spectrum licences allowed considerable flexibility in the technology employed and the purpose for which they were used, the 2 GHz band was expected to become the principal band for the delivery of 3G telecommunications services to metropolitan Australia and some regional areas.

The areas covered by the spectrum licences allocated in the 2 GHz band covered 95 per cent of the Australian population. In all state and territory capital cities (except Canberra), 60 MHz of paired spectrum and 20 MHz of unpaired spectrum was auctioned. In Canberra, 45 MHz of paired spectrum and 20 MHz of unpaired spectrum was auctioned. In regional Australia, 20 MHz of paired spectrum was auctioned. The unpaired spectrum (1900-1920 MHz) was made available in regional areas by issuing apparatus licences in 2006.

The Minister for Communications, Information Technology and the Arts, Senator the Hon. Richard Alston, gave the ACA a direction, the *Radiocommunications (Spectrum Licence Limits – 2 GHz Band) Direction No. 2 of 2000 (the 2 GHz spectrum limits direction)*, under subsection 60(10) of the Act, imposing limits on the spectrum licences that could be allocated to any one person.

The 2 GHz spectrum limits direction has since been repealed; see the *Radiocommunications (Spectrum Licence Limits – 2 GHz Band) Repeal Direction 2017*.

Seven bidders took part in the 2 GHz auction. Six of the bidders were allocated spectrum licences. More information on the 2 GHz auction is available on the ACMA website.

After the 2 GHz auction, there were 10 unsold lots. Those lots have been reconfigured for the purposes of this Determination.

Licences were issued for a 15 year term with a date of effect from 12 October 2002 and expiry date of 11 October 2017. As provided for in the Act, the ACMA may re-issue an expiring spectrum licence to the same licensee (subject to payment of the associated spectrum access charge) if the ACMA is satisfied that under subsection 82(1):

- > the licence was used in the provision of a service that falls under a Ministerial class of services determination made under subsection 82(3); or
- > special circumstances exist as a result of which it would be in the public interest to re-issue the licence.

On 9 February 2012, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, made the *Radiocommunications (Class of Services) Determination 2012*, which provided that it would be in the public interest to re-issue licences to licensees in a number of bands, including the 2 GHz band. The ACMA has re-issued spectrum licences to spectrum licensees in the 2 GHz band.

During the re-issue process, the ACMA identified some additional spectrum in the Canberra area that was not included in the *Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2000 (the original 2 GHz re-allocation declaration)* made in October 2000. The 1920-1935 MHz and 2110-2125 MHz frequency ranges covering the geographic area of Canberra were not included, due to possible interference to mobile telecommunications receivers from high powered deep space transmitters operating in the Canberra Deep Space Communications Complex (CDSCC), at Tidbinbilla. Given advancements in computer processing and terrain modelling since the original 2 GHz re-allocation direction was made, the ACMA re-assessed the risk for interference. Results indicated that although there is potential for interference, there was an opportunity to improve utility of the 2 GHz spectrum in the Canberra area.

To allocate spectrum licences for all remaining available spectrum in the 2 GHz band (including the additional spectrum in Canberra), the ACMA undertook public consultation in December 2016 with the release of a consultation paper ([Proposed designation of spectrum licensing—2 GHz and 3.4 GHz](#))

[bands](#)). Spectrum licences issued in the Canberra area will be allocated on the basis that the ACMA does not intend to afford interference protection to devices operated under these licences from the CDSCC deep space transmitters.

On 21 April 2017, the Minister for Communications and the Arts, Senator the Hon. Mitch Fifield made the *Radiocommunications (Spectrum Designation – 2 GHz and 3.4 GHz Bands) Notice 2017 (the 2 GHz and 3.4 GHz designation notice)* making the unallocated spectrum in the 2 GHz band available for allocation as spectrum licences. Lots are available in Adelaide, Brisbane, Canberra, Darwin, Hobart and Perth in the 2 GHz band (collectively, **the 2 GHz lots**).

### *2.3 GHz band – conversion to spectrum licences in year 2000*

In 2000, apparatus licensees in the 2.3 GHz band were offered the opportunity to convert their apparatus licences to 15 year spectrum licences, under Subdivision A of Division 1 of Part 3.2 of the Act. Multipoint Distribution Station (**MDS**) apparatus licences in the band, the licensees of which paid the conversion fee (a total of some \$71 million), were converted to 15-year spectrum licences. The spectrum licences could be used for any purpose provided the licensees complied with the technical framework, which allowed for a wider variety of uses than the former MDS apparatus licences. The licences expired on 24 July 2015.

### *2.3 GHz band – spectrum licence allocation in 2012*

The spectrum that remained available after the conversion to spectrum licences in 2000 was allocated by auction in 2012. More information on the 2.3 GHz auction is available on the ACMA's website:

<http://www.acma.gov.au/Industry/Spectrum/Radiocomms-licensing/Spectrum-licences/allocation-summary-2point3-ghz-2012>

The spectrum licences issued as a result of the allocation process in 2012 expired on 24 July 2015, in line with the expiry date of the spectrum licences issued in 2000.

### *2.3 GHz – spectrum licence re-issue in 2015*

On 9 February 2012, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, made the *Radiocommunications (Class of Services) Determination 2012*, which provided that it would be in the public interest to reissue licences to licensees in a number of bands, including the 2.3 GHz band.

Spectrum licences were re-issued to some licensees in the 2.3 GHz band in 2015, with an expiry date of 24 July 2030. Some licensees did not apply to have their licences re-issued, and therefore some spectrum in the 2.3 GHz band is available for allocation.

On 21 April 2017, the Minister for Communications and the Arts, Senator the Hon. Mitch Fifield made the 2 GHz and 3.4 GHz designation notice making the unallocated spectrum in the 3.4 GHz band available for allocation as spectrum licences. Lots are available under the Determination in the 2.3 GHz band in Cameron Corner, Central Australia, Delamere, Geraldton/Kalgoorlie, the Goldfields in Western Australia, Kimberly, Melbourne (including Geelong), parts of the Australian Capital Territory, the Radio Quiet Zone in Western Australia, eastern New South Wales (including Sydney, Newcastle and Wollongong), and Telfer Mine (collectively, **the 2.3 GHz lots**).

### *3.4 GHz band – allocation in 2000*

The ACA offered the 3.4 GHz band for allocation in October 2000 (**the 3.4 GHz band auction**). The ACA allocated 2 x 17.5 MHz in 12 major cities and towns, and 2 x 32.5 MHz in another five regional areas.

The Minister for Communications, Information Technology and the Arts, Senator the Hon. Richard Alston, gave the ACA the *Radiocommunications (Spectrum Licence Limits- 3.4 GHz band) Direction No.1 of 2000 (the 3.4 GHz spectrum limits direction)* under subsection 60(10) of the Act, imposing limits on the spectrum licences that could be allocated to any one person. Specific limits applied in relation to Telstra.

The 3.4 GHz spectrum limits direction has since been revoked; see the *Radiocommunications (Spectrum Licence Limits – 3.4 GHz Band) Direction Revocation 2002 (No. 1)*.

The 3.4 GHz auction was completed in October 2000. More information on the 3.4 GHz auction is available on the ACMA's website:

<http://www.acma.gov.au/Industry/Spectrum/Radiocomms-licensing/Spectrum-licences/auction-summary-3point4-ghz-fixed-wireless-access-2000>

Twenty two lots remained unallocated after the 3.4 GHz auction. They were made available for allocation in 2002, and thereafter on a quarterly basis from 2004 to 2008, with a total of nine additional lots allocated.

### *3.4 GHz band – re-issue of spectrum licences in 2015*

On 9 February 2012, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, made the *Radiocommunications (Class of Services) Determination 2012*, which provided that it would be in the public interest to re-issue licences to licensees in a number of bands, including the 3.4 GHz band. The majority of spectrum licences in the 3.4 GHz band have been re-issued to the same licensees, with an expiry date of 13 December 2030.

As a result, the lots now available under this Determination in the 3.4 GHz band represent a combination of the spectrum that was not re-issued in 2015 and unsold lots from preceding allocation processes.

The ACMA consulted on the spectrum to be available in the 3.4 GHz band in December 2016 with the release of a consultation paper [\*Proposed designation of spectrum licensing—2 GHz and 3.4 GHz bands\*](#).

On 21 April 2017, the Minister for Communications and the Arts, Senator the Hon. Mitch Fifield made the 2 GHz and 3.4 GHz designation notice, making the unallocated spectrum in the 3.4 GHz band available for allocation as spectrum licences. Lots are available in Adelaide, Brisbane, Canberra, Hobart, Launceston, Rockhampton, Sydney and Toowoomba (collectively, **the 3.4 GHz lots**).

### **Documents incorporated by reference**

The Determination incorporates the following Acts and legislative instruments by reference (including by the adoption of definitions), or otherwise refers to them:

- > 1800 MHz re-allocation declaration;

- > 1800 MHz spectrum limits direction;
- > 2 GHz and 3.4 GHz designation notice;
- > *Acts Interpretation Act 1901*;
- > *A New Tax System (Australian Business Number) Act 1999*;
- > *Australian Communications and Media Authority Act 2005*;
- > *Banking Act 1959*;
- > *Competition and Consumer Act 2010*;
- > *Corporations Act 2001*;
- > *Radiocommunications (Spectrum Designation) Notice No. 1 of 2000 (14/01/2000) (the 2.3 GHz designation notice)*;
- > *Radiocommunications Spectrum Marketing Plan (1800 MHz unallocated lots band) 2017 (the 1800 MHz marketing plan)*;
- > *Radiocommunications Spectrum Marketing Plan (2 GHz unallocated lots band) 2017 (the 2 GHz marketing plan)*;
- > *Radiocommunications Spectrum Marketing Plan (2.3 GHz unallocated lots band) 2017 (the 2.3 GHz marketing plan)*;
- > *Radiocommunications Spectrum Marketing Plan (3.4 GHz unallocated lots band) 2017 (the 3.4 GHz marketing plan)*;
- > *Telecommunications Act 1997*.

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (<http://www.legislation.gov.au>). The Acts are incorporated as in force from time to time, in accordance with section 10 with the *Acts Interpretation Act 1901* and subsection 13(1) of the *Legislation Act 2003*. The legislative instruments listed above are incorporated as in force, from time to time, in accordance with section 5 of the Determination and subsection 14(1) of the *Legislation Act 2003*.

## Consultation

Before the Determination was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

A draft version of the Determination was released for public consultation on 2 August 2017, together with an explanatory information paper: <http://www.acma.gov.au/Industry/Spectrum/Spectrum-projects/Multi-band-auction/multiband-residual-lots-auction>. Consultation closed on 25 August 2017.

The ACMA received four written submissions to this information paper. The ACMA took the views of stakeholders into consideration during the revision of the Determination. One submission dealt with the size of lots and whether to split individual lots into two in some areas (in particular, some of the lots representing metropolitan areas in the 3.4 GHz band). The ACMA decided against splitting these lots, as the proposed lot structure was not the subject of adverse comments from the other three

submitters, and because engineering advice was that the proposed lot structure was the most spectrally efficient.

Two submitters suggested different proposals for the order of allocation of lots. The different proposals could not be reconciled with each other, and the ACMA took the view that allocating in order of frequency band was the most technically neutral option.

One submitter requested that the affiliation reporting requirements be relaxed to lessen reporting burden and, given that the 2 GHz spectrum limits direction has been repealed, the ACMA has removed the reporting requirements for the 2 GHz band and introduced lesser reporting requirements for the 1800 MHz band. Applicants for 1800 MHz lots will still be required to provide information about their associates and affiliations for the purposes of the 1800 MHz spectrum limits direction; however, most of the reporting will occur towards the end of the auction process.

In accordance with subsection 60(14) of the Act, the ACMA consulted with the Australian Competition and Consumer Commission (ACCC) about whether the procedures in this Determination should include a requirement that the ACMA give specified information to the ACCC and, if so, the nature of that requirement. The ACMA consulted with staff of the ACCC by email in June 2017. Section 80 has been included in the Determination and was supported by the ACCC's response to that consultation.

### **Regulatory impact assessment**

Prior to making the Determination, the ACMA was informed that the Office of Best Practice Regulation (**the OBPR**) considered that the proposal to allocate licences in the 1800 MHz band, the 2 GHz band, the 2.3 GHz band and the 3.4 GHz band was sufficiently related to previous processes considered by the OBPR, including the 1800 MHz auction, that the Determination was exempt from the requirement for a Regulation Impact Statement.

### **Statement of compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement, to the extent it applies to the Determination.

### **Overview of the instrument**

On 21 April 2017, the Minister for Communications, Senator the Hon. Mitch Fifield, made the 2 GHz and 3.4 GHz designation notice, making residual spectrum in both the 2 GHz and 3.4 GHz bands available for allocation as spectrum licences.

This spectrum, and spectrum covered by the *Radiocommunications (Spectrum Re-allocation—Regional 1800 MHz Band) Declaration 2015* and the *Radiocommunications (Spectrum Designation) Notice No. 1 of 2000 (14/01/2000)*, represented by unsold lots from earlier 1800 MHz and 2.3 GHz auctions, and spectrum covered by spectrum licences in the 2.3 GHz band that were not re-issued on expiry, were considered to be similar enough to auction together in three stages in one SCA process.



Under subsection 60(1) of the Act, the ACMA must determine the procedures for allocating spectrum licences by auction, tender or for a pre-determined or negotiated price. The Determination is made, in substantial part, under that section. The Determination sets out the procedures to be applied in allocating spectrum licences in the 1800 MHz, 2 GHz, 2.3 GHz and 3.4 GHz bands.

These licences will be allocated in a concurrent and sequential auction using the SCA methodology.

If, in particular circumstances, the ACMA considers there is no need for an auction, the Determination allows the ACMA to allocate a licence to an applicant without conducting an auction. To the extent that the Determination is made under subsection 60(1) of the Act, it is not a disallowable instrument (see item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Under subsection 294(1) of the Act, the ACMA may also make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the time when spectrum access charges are payable. The Determination fixes the spectrum access charges payable by the persons to whom spectrum licences in the auction to be conducted under the Determination are allocated, by reference to the winning bids at the auction (or, if there is no auction, by reference to starting prices set by the ACMA). To the extent that the Determination fixes the spectrum access charges payable by licensees for issuing spectrum licences as a result of the auction, or allocation for a pre-determined price, and the timing of such payments, the Determination is made under subsection 294(1) of the Act. To the extent that the Determination is made under subsection 294(1) of the Act, it is a disallowable instrument.

Subject to compliance with the 1800 MHz spectrum limits direction, which requires limits to be included in the Determination in relation to the 1800 MHz band, any person may apply to participate in the auction to be held in accordance with the Determination.

If there are any unsold lots as the result of the auction process conducted in accordance with the Determination, the ACMA will accept post-auction applications for licences under Schedule 4 to the Determination after a notice is placed on the ACMA website. The ACMA will allocate licences on a first-in-time application basis to those applicants who have filled out and lodged the application form for an unsold lot (including an estimate of the post-auction pre-determined price) and, after ACMA notification of the price, paid the post auction pre-determined price as outlined in Schedule 4.

### ***Human rights implications***

The ACMA has assessed whether the Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Determination does not engage any of those rights or freedoms.

### ***Conclusion***

The Determination is compatible with human rights as it does not raise any human rights issues.



**Notes to the *Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017*.**

**PART 1 – PRELIMINARY**

**Section 1      Name**

This section provides for the Determination to be cited as the *Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017*.

**Section 2      Commencement**

The section provides for the Determination to commence at the start of the day after it is registered on the Federal Register of Legislation.

**Section 3      Authority**

This section identifies the provisions of the Act that authorise the making of the Determination, namely sections 60 and 294 of the *Radiocommunications Act 1992*.

**Section 4      Interpretation**

This section defines a number of key terms used throughout the Determination, and signposts where other key terms are defined in the Determination. A number of other expressions used in the Determination are defined in the Act.

This section also provides that the range of numbers that identifies a frequency range includes the higher, but not the lower, number, and that a reference to time in the Determination is a reference to the legal time in the Australian Capital Territory.

**Section 5      References to other legislative instruments, and to other instruments or writing**

This section provides that in the Determination, 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, and a reference to another instrument or writing is a reference to that instrument or writing as existing from time to time.

**Section 6      Giving documents to ACMA**

This section sets out requirements for lodging documents with the ACMA, including the alternative means by which documents can be lodged. These requirements apply to any documents being lodged with the ACMA for the purpose of the allocation process under the Determination. They are intended to work primarily with section 29 (Making an application) and section 33 (Amount of deposit or deed of financial security required), among other sections.

A person may give a document to the ACMA by email, fax or delivery to a physical address (including delivery by registered mail). Where documents are submitted by email, this section also prescribes the electronic file format that particular documents being lodged must be in, namely, Portable Document Format (PDF) for any document, Rich Text Format (RTF) for any document that is not a statutory declaration or a deed, or any other electronic format approved by the auction manager.

Where documents are lodged by fax, this section also prescribes the information that must be provided on a cover sheet to accompany the documents being lodged.

## **Section 7      Payment of amounts**

This section prescribes the manner in which payments under the Determination must be made to the ACMA.

Amounts can be paid to the ACMA by bank cheque or by electronic transfer and must be made in Australian currency.

Where a person pays an amount by bank cheque, the payment must be made by the deadline specified in, or set in accordance with, the Determination.

Where electronic transfer is used to make a payment, the ACMA must receive from the person making the payment evidence (such as a transfer receipt) that an electronic transfer has been made for the full amount. A person will be taken to have made a payment by the specified or set deadline, provided the ACMA receives the full amount in the ACMA's nominated bank account within 3 working days of the deadline and the person gives the ACMA evidence that the transfer was made on or before the deadline. Where full payment is not received within 3 working days, the payment will only be taken to have been made if the person making the payment can show that it has taken all reasonable steps to ensure that the amount was paid by the due date.

This section also provides that a payment will not be considered to have been paid in full where bank charges or government duties imposed on the payment reduce the amount to less than the amount due. It is in the interests of the person making the payment to ensure that any bank charges or government duties imposed on a payment do not reduce the payment received by the ACMA to less than the full amount due.

Any amount to be paid under the Determination that is not an amount in whole dollars is to be rounded up to the next dollar.

## **Section 8      Statutory declaration for body corporate**

This section provides that where the Determination requires a body corporate to make a statutory declaration, such a declaration must be made by a director or a secretary of that body corporate.

## **PART 2 – LIMITS ON ALLOCATION OF SPECTRUM**

### **Section 9      Simplified outline of this Part**

This section sets out a simplified outline of Part 2.

## **Section 10      Meaning of 1800 MHz allocation limits**

The Minister has given the ACMA written directions under subsection 60(10) of the Act (see section 4 of the 1800 MHz spectrum limits direction), which require 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.

The 1800 MHz spectrum limits direction requires the allocation limits to be:

- > 25 MHz of spectrum in the frequency band 1725 MHz to 1785 MHz;
- > 25 MHz of spectrum in the frequency band 1820 MHz to 1880 MHz;

in regional Australia, as defined in the 1800 MHz re-allocation declaration.

There are no directions in force for any part of the 2 GHz band, the 2.3 GHz band or the 3.4 GHz band. The Determination does not, therefore, include any limits on the allocation of spectrum in those bands.

## **Section 11      Meaning of associate**

Subsection 3(1) of the 1800 MHz spectrum limits direction defines *specified group of persons* as an applicant for a spectrum licence and all the applicant's 'associates'. This section also defines the term *associate*, in relation to a person, for the purposes of determining who is within a specified group of persons. The Determination adopts these definitions in largely the same terms for the purpose of complying with the 1800 MHz spectrum limits direction. An associate of a person includes:

- > if the person is a company – a director of the company, certain shareholders in the company, and a related body corporate of the company;
- > if the person is an individual – the person's spouse or de facto partner, a company of which the person is a director, or a company in which the person has a certain level of shareholding;
- > in any case, a person that is a party to a 'relevant agreement' with the person, as defined under subsection 11(2), in the same way that it is defined in the 1800 MHz spectrum limits direction, for use or acquisition of a spectrum licence in relation to part of spectrum referred to in the 1800 MHz re-allocation declaration.

The inclusion of parties to a 'relevant agreement' as associates covers situations where one person (**the first person**) has agreed that another person would acquire spectrum in their own right, but for the benefit of the first person. Roaming services agreements between mobile telecommunications carriers, and agreements between carriers provided for under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*, are not included in the meaning of 'relevant agreement' for the purposes of the definition of 'associate'.

## **Section 12      Affiliation between applicants or bidders**

Under Parts 5 and 7 of the Determination, the ACMA has determined procedures that aim to ensure that affiliated applicants or bidders are identified after the end of the allocation process, to ensure that the 1800 MHz allocation limits set out in the Determination are not exceeded.

This section sets out when two applicants or bidders will be taken to be **affiliated**, and that affiliated applicants or bidders will be taken to be a single specified group of persons for the purpose of applying the 1800 MHz allocation limits. Under this section, two applicants or bidders are affiliated if they are associates of each other or they have an associate in common. An example would be where two applicants or bidders have a director in common.

This section is recursive, so that more than two applicants or bidders may be taken to be in a single specified group of persons for the purpose of the allocation limits. This is included in order to comply with section 4 of the 1800 MHz spectrum limits direction.

### **Section 13      Affiliation between applicant or bidder and existing licensee**

Under Parts 5 and 7 of the Determination, the ACMA has determined procedures that aim to ensure that any person affiliated with a licensee that already holds a spectrum licence in the 1800 MHz band (**existing 1800 MHz licensee**) is not allocated its own licence in excess of the 1800 MHz allocation limits.

This section sets out when an applicant or bidder is taken to be **affiliated** with an existing 1800 MHz licensee. An applicant or bidder is affiliated with an existing 1800 MHz licensee where the applicant or bidder is an associate of the existing 1800 MHz licensee, or if 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 existing 1800 MHz licensee. This means that an applicant or bidder will be taken to be affiliated with an existing 1800 MHz licensee if they have an associate in common.

If an applicant or bidder is affiliated with an existing 1800 MHz licensee, they are taken to be in a single specified group of persons for the purpose of the 1800 MHz allocation limits. This section is recursive, so that one or more existing 1800 MHz licensee, 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. This is included in order to comply with section 4 of the 1800 MHz spectrum limits direction.

### **Section 14      Information relevant to considering whether applicants, bidders or existing 1800 MHz licensees are affiliated**

This section sets out what matters the ACMA must take into account in considering whether an affiliation exists between two or more applicants or bidders, or whether one or more applicants or bidders are affiliated with one or more existing 1800 MHz licensee, namely, the documents and information given by applicants and bidders under the Determination. The ACMA may have regard to any other information it considers relevant in determining whether two or more applicants or bidders are affiliated, or one or more applicants or bidders are affiliated with one or more existing 1800 MHz licensees.

## **PART 3 – CONFIDENTIALITY**

### **Section 15      Simplified outline of this Part**

This section sets out a simplified outline of Part 3.

### **Section 16      Meaning of *confidential information***

The definition of the term ***confidential information*** forms the basis of the confidentiality rules imposed by this Part. The definition includes information that could give rise to collusion or price-

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signalling (both deliberate and inadvertent) if disclosed, such as information about a bid, or about proposed bids of an applicant or bidder, an applicant's or bidder's bidding strategy, or the amount an applicant or bidder is willing to pay for a lot or group of lots. It also includes documents an applicant or bidder has given to the ACMA for the purpose of the auction (e.g., their preference nomination form) and information provided to a bidder by the ACMA for the purposes of participating in the auction. More generally, the definition also covers any information that, if disclosed, could be expected to affect or be capable of affecting another applicant or bidder's bids, proposed bids or bidding strategy or the outcome of the allocation process.

## **Section 17      Obligation not to disclose confidential information**

This section provides that an applicant or bidder must not disclose its confidential information to any person, other than in the case of specific exceptions listed in the section. This confidentiality obligation also applies to a related person of an applicant or bidder who has knowledge of the applicant's or bidder's confidential information.

Although the disclosure of confidential information is prohibited by this section, it is acknowledged that, in order for an applicant to effectively participate in the allocation process (and comply with other requirements), there are certain limited circumstances in which confidential information may need to be communicated to another person. Subsection 17(2) sets out the exceptions to the prohibition on the disclosure of confidential information. These include where an applicant or bidder discloses confidential information to a related person of that applicant or bidder, or to an advisor or consultant for the purpose of obtaining advice relating to the allocation process or obtaining finance to purchase spectrum licences in the allocation process. It also includes where an applicant or bidder discloses confidential information to the ACMA, or as authorised by the Determination, or as required by law.

Information that would otherwise fall within the definition of confidential information but is already publicly available (and was not made available because of a breach of section 17) will also be able to be disclosed.

## **Section 18      Duration of confidentiality obligations**

In order to protect against collusion and price-signalling (whether deliberate or inadvertent) at all stages of the allocation process, the rules on confidential information apply to each applicant, bidder and related person with knowledge of the applicant's or bidder's confidential information from the date of application until after the allocation process has ended. This section sets out when, after the relevant allocation process (either auction or allocation for a pre-determined price), the confidentiality obligations for an applicant or bidder, and for a related person of an applicant or bidder, will end. An applicant or bidder and their related persons will not be released from the obligation not to disclose confidential information until one of the circumstances set out in this section takes place (i.e., the applicant is notified about the applicant's entitlement to be allocated a spectrum licence under subsection 44(1), the bidder is notified that the bidder is not a winning bidder under subsection 64(1), the applicant (who has withdrawn) is notified under subsection 64(3) that the applicant's confidentiality obligation is at an end, or the bidder is asked to make a statement as a winning bidder under section 65).

The confidentiality obligations do not apply in relation to the post-auction allocation process established under Schedule 4 to the Determination.

## **Section 19 Reporting breach of confidentiality**

Given its potential impact on the outcome of the auction process, and to ensure a fair and robust auction, it is important that the ACMA is made aware of any breach of the rules on confidentiality as soon as possible. This section requires applicants and bidders, and their related persons, to notify the ACMA in writing as soon as possible after becoming aware of a breach of the confidentiality rules, and no later than 2 working days after becoming aware of the breach. This applies where the applicant or bidder, or related person of the applicant or bidder, discloses the confidential information or receives confidential information from another applicant, bidder or related person.

## **Section 20 Notice of breach of confidentiality**

This section states that where the ACMA has reason to believe there has been a breach of the rules regarding the disclosure of confidential information by an applicant or bidder (or a related person of an applicant or bidder) the ACMA must advise the applicant or bidder of that fact and ask it to make submissions to the ACMA on this matter. The ACMA must also set a deadline for the provision of any submissions that is no more than 5 working days after the date of the request.

The ACMA is not obliged to tell the applicant or bidder of its belief until as soon as practicable after the auction period ends or notification under a pre-determined price process occurs.

## **Section 21 Deed of confidentiality required from related persons**

A deed of confidentiality represents an explicit commitment on the part of each related person of an applicant or bidder that they will comply with the rules regarding the disclosure of confidential information throughout the allocation process. It is important that individual employees of an applicant or bidder (or of a related body corporate that provides services to the applicant or bidder) who have knowledge of their employer's confidential information understand the importance of confidentiality in this process and acknowledge this through signing a confidentiality deed.

The section states that a deed of confidentiality will only be required from related persons who are also employees of the applicant or bidder, or employees of a related body corporate of the applicant or bidder that provides services to the applicant or bidder. The obligation to complete a deed of confidentiality under this section will not extend to a director or company secretary of an applicant or bidder, unless the director or secretary is also an employee of the applicant or bidder.

Where a related person of an applicant gains knowledge of the applicant's confidential information prior to the application deadline, a deed of confidentiality from the related person must be submitted to the ACMA by the application deadline.

## **PART 4 – PROCEDURES BEFORE AUCTION OR ALLOCATION FOR A PRE-DETERMINED PRICE**

### **Division 1 Simplified outline**

#### **Section 22 Simplified outline of this Part**

This section sets out a simplified outline of Part 4.

## **Division 2 Preliminary**

### **Section 23 Auction manager**

This section provides that the ACMA must appoint a member of the ACMA, a member of the ACMA's staff, or an officer or employee of another Commonwealth authority, whose services are made available to the ACMA, to manage the auction (**the auction manager**). This appointment will be made in writing. The auction manager will facilitate and manage the auction conducted under the Determination.

In conducting auctions under a determination made under section 60 of the Act, it has been a long standing practice of the ACMA (and the ACA before the ACMA) to appoint, as an auction manager or auctioneer, a member of the ACMA's (or ACA's) staff holding a particular role. Generally, this has been the manager of the team responsible for spectrum licence allocation, who is employed at Executive Level 2 under the *Public Service Act 1999*. The ACMA expects to continue this policy for the auction process established by the Determination.

### **Section 24 Setting application fee**

This section provides that the ACMA must set an application fee amount prior to inviting applications for the auction. This amount set will be included in a notice to advertise the auction and must be paid as part of a valid application.

### **Section 25 Application fee not refundable**

This section states that the application fee to be paid under the Determination as part of the application requirements will not be refunded to an applicant or bidder under any circumstances.

### **Section 26 Starting prices**

This section provides that the ACMA must set the starting price for each of the lots available to be allocated. The starting price for a lot is the floor for bids on the lot in the auction or, if there is no auction, is the basis for calculating the spectrum access charge for a spectrum licence issued for that lot. It will not be possible within the auction system for an applicant to place a bid for an amount below the starting price.

Under section 28, the ACMA must make available an approved preference nomination form to be completed by applicants as part of an application. The ACMA must publish each amount set under this section, and the approved preference nomination form, on its website.

The preference nomination form must be used by each applicant to nominate its preferred lots. Each applicant who is registered as a bidder will only be able to bid during the auction on a lot it has nominated in the preference nomination form. This requirement will maximise the possibility of allocating lots in the most effective manner. The ACMA may also use the information in a preference nomination form to decide whether it can allocate licences without conducting an auction (see Part 5 of the Determination). It will be necessary for applicants to know the starting prices for lots to calculate the percentage of the starting prices of the applicants' preferred lots, which is required for the deposit or deed of financial security required to be provided by section 29 (see section 33).



## **Division 3 Advertising the auction**

### **Section 27 Advertising of auction by ACMA**

This section provides that the ACMA must publish a notice on its website ([www.acma.gov.au](http://www.acma.gov.au)) inviting interested persons to apply to the ACMA to participate in the auction. The notice will specify the spectrum to be allocated and will describe in general terms how the allocation will proceed. It will also inform prospective applicants how they may obtain the applicant information package (AIP) that will explain the allocation process in greater detail.

The deadlines for lodging the documentation and payments required for an application and preference nomination (**application deadline**) to participate in the allocation process will also be included in the notice.

This section also notes that if there are any changes to information in the notice, the ACMA must publish another notice on its website with details of the change. Subsection (3) provides that the ACMA may also publish the information provided in the advertisement, and other information about the auction, by other means.

### **Section 28 Applicant information package**

The AIP is intended to give prospective participants the key information they need to decide whether to participate in the allocation process. This section specifies the information that the AIP will contain. The AIP will include the Determination, the 1800 MHz marketing plan, the 2 GHz marketing plan, the 2.3 GHz marketing plan, the 3.4 GHz marketing plan, the 1800 MHz re-allocation declaration, the 2 GHz and 3.4 GHz designation notice, the 2.3 GHz designation notice, and the 1800 MHz spectrum limits direction, which are the instruments that provide the legal basis for the allocation process.

The AIP will provide information needed for a person to apply to be registered as a bidder, participate in the auction or pre-determined price allocation, and be allocated and issued spectrum licences. All forms and documentation required for an applicant to apply and be registered to participate in the allocation will be provided.

To assist interested parties to better understand the contents of the AIP, this package will include a covering paper which will set out a concise summary of how the allocation will take place as well as any other relevant information. This document is referred to in the Determination as the 'guide to the auction' (paragraph 28(1)(j)).

The ACMA must publish the AIP on its website. A notice will also be published giving details of any subsequent changes made to the AIP after initial release.

## **Division 4 Application to participate in auction**

### **Section 29 Making an application**

To take part in the auction, a person must first apply to the ACMA to be registered as a bidder. This section sets out the required documents and forms that an applicant must submit, and requires those documents and forms to be accompanied by the application fee. For an application to be considered valid, applicants must do the following before the application deadline:

- > lodge a completed application form;
- > lodge a signed deed of acknowledgement completed by the applicant, which specifies that the applicant agrees to be bound by the terms of the Determination;
- > lodge a signed deed of confidentiality completed by the applicant;
- > lodge a completed preference nomination form;
- > pay a deposit of an amount to the ACMA on behalf of the Commonwealth, or give the ACMA on behalf of the Commonwealth a deed of financial security for the amount, or a combination of both;
- > pay an application fee set by the ACMA under section 24, in the manner specified in section 7; and
- > if the applicant is nominating a 1800 MHz lot in its preference nomination form, a statutory declaration stating whether the applicant is affiliated with an existing 1800 MHz licensee. The identities of the existing 1800 MHz licensees can be obtained from the Register of Radiocommunications Licences maintained by the ACMA under the Act.

Blank copies of the application form, the preference nomination form and the two deeds will be provided in the AIP.

Section 21 also requires each applicant to provide a signed deed of confidentiality from each related person identified in that section.

Instructions on how to lodge documents are in section 6. An applicant may also lodge an updated document at any time prior to the application deadline, but not afterwards. However, if an applicant that has nominated a 1800 MHz lot becomes, or ceases to be, an affiliate of an existing 1800 MHz licensee, the applicant can give an updated statutory declaration at any time.

### **Section 30 Applicants to notify ACMA if application information incorrect**

This section requires an applicant to provide the ACMA with correct information, if it becomes aware that information in its application has changed or is incorrect.

### **Section 31 Preferred lots**

Applicants will nominate their preferred lots in the completed preference nomination form. Section 33 provides that, subject to the matters set out below, an applicant can nominate any or all of the 1800 MHz lots, the 2 GHz lots, the 2.3 GHz lots and the 3.4 GHz lots as its preferred lots.

If an existing 1800 MHz licensee nominates a 1800 MHz lot or combination of 1800 MHz lots which would mean that, when aggregated with its existing spectrum licence, the lot size of the nominated lots exceeds the 1800 MHz allocation limits, the licensee is taken not to have nominated those lots, and the ACMA must tell the applicant in writing that it is taken not to have nominated the lots. The lots in other bands nominated by the licensee are not affected.

### **Section 32 Procedure if applicant affiliated with existing 1800 MHz licensee**

This section sets out the consequences of an applicant being affiliated with an existing 1800 MHz licensee, where the applicant nominates one or more 1800 MHz lots in its preference nomination form and the lot size of some or all of those lots, when aggregated with the spectrum licence in the 1800 MHz band, exceeds the 1800 MHz allocation limits. The aim of this section is to give such applicants a chance to lodge a revised preference nomination form.

Under this section, the ACMA must write to each affiliated applicant and inform it that section 32 applies. To be able to participate in stage 1 of the auction, in relation to the 1800 MHz lots, the affiliated applicant must give the ACMA a new preference nomination form within 5 working days of the ACMA notifying the affiliated applicant of the affiliation.

If an applicant does not respond with a new preference nomination form to the ACMA within 5 working days of the notification, the applicant is taken to have nominated no 1800 MHz lots as its preferred lots (any other lots nominated by the applicant are unaffected). If the new preference nomination form still nominates lots that, when aggregated with the spectrum licence in the 1800 MHz band, exceed the 1800 MHz allocation limits, then the affiliated applicant is taken to have nominated no 1800 MHz lots (any other lots nominated by the applicant are unaffected).

### **Section 33 Amount of deposit or deed of financial security required**

An applicant must pay a deposit or provide a deed of financial security, or a combination of both, to the ACMA by the application deadline. The amount to be secured, in relation to an applicant, is 10 per cent of the starting price of the applicant's preferred lots as nominated in the original preference nomination form. The amount does not vary if the applicant gives the ACMA a revised preference nomination form under section 32.

A situation may arise where the amount secured by deposit or deed of financial security in relation to an applicant by the application deadline is less than the amount that is due, based on the lots that an applicant has nominated in its preference nomination form. Applicants have three working days from the date they are notified by the ACMA that this has occurred to provide the ACMA with an additional deposit or deed of financial security to make up the balance to secure the number of preferred lots that they have nominated.

However, if such an underpayment exists after this three working day period, then the applicant's preferred lots are worked out by the ACMA removing from the applicant's preference nomination form the lot with the lowest starting price, until the remaining preferred lots result in an amount that is equal to, or less than, the deposit paid or the deed of financial security given (or both). If two or more lots in the applicants preference nomination form have the equal lowest starting price, the ACMA may select any of those lots to be the lot with the lowest starting price. If the applicant has given the ACMA a revised preference nomination form under section 32, and the ACMA removes a lot from the original preference nomination form under this section, it is taken to be removed from the revised preference nomination form.

If, after the ACMA removes lots from an applicant's preference nomination form under this section, no lots remain, the applicant is taken to have withdrawn its application. The ACMA must tell an applicant in writing if the ACMA has removed some preferred lots or if the applicant is taken to have withdrawn its application.

A deed of financial security given to the ACMA under section 29 must be executed by an Australian-owned authorised deposit-taking institution within the meaning of the *Banking Act 1959* which is a bank. 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.

If a deed of financial security is given to the ACMA by email or fax, the original document must also be received by the ACMA within 3 working days after the preference deadline, or a later time agreed by the ACMA, for the deed to be considered to have been given to the ACMA.

Under section 33, an applicant is considered to have withdrawn if the ACMA is not satisfied that the person executing a deed of financial security is an Australian-owned authorised deposit-taking institution within the meaning of the *Banking Act 1959* which is a bank. The ACMA must tell the applicant of this decision.

## **Division 5    Other matters**

### **Section 34    Bid increment percentage**

After the application deadline, the ACMA must set the bid increment percentage for all lots 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. This bid increment percentage affects the minimum bid that can be made by a bidder for a lot in a round, if the bidder wishes to make bids in later rounds.

The specified price in the first round for bidding a lot will be the starting price for that lot plus the bid increment percentage multiplied by the starting price. A person wishing to bid on that lot must make either a continue bid in order to continue to bid in future rounds, or make an exit bid. For a round (**the current round**), the specified price for the next round for a lot is calculated by adding a percentage increment of the specified price for the current round for that lot to the specified price for the current round.

For example, if the starting price for a lot is \$100, and the bid increment percentage is 10 per cent, then:

- > the specified price for the first round is  $\$100 + \$10 = \$110$ , and:
  - a bid in the first round greater than or equal to \$100, but less than \$110, is an exit bid, and the bidder will not be able to make a bid in any later rounds;
  - a bid in the first round equal to \$110 is a continue bid, and the bidder will be able to make a bid in the next round;
  - a bid in the first round greater than \$110 is a continue bid, and the bidder will be able to make a bid in at least the next round and possibly additional rounds (see below);
- > the specified price for the second round is  $\$110 + \$11 = \$121$ , and:
  - a bid in the second round greater than or equal to \$110, but less than \$121, is an exit bid, and the bidder will not be able to make a bid in any later rounds;

- a bid in the second round equal to \$121 is a continue bid, and the bidder will be able to make a bid in the next round;
- a bid in the second round greater than \$121 is a continue bid, and the bidder will be able to make a bid in at least the third round and possibly additional rounds; and
- a bid in the *first* round greater than or equal to \$121 (that is, a continue bid at an ‘advance price’ in the first round) is taken to be a continue bid for the second round, and the bidder will be able to make a bid in at least the next round, and possibly additional rounds.

See Schedule 1 for more information about the rules of the auction.

During the auction, the auction manager can vary the bid increment percentage (which will affect the specified price of lots in rounds after the variation) after fulfilling the consultation requirements set out in clause 6 of Schedule 1 to the Determination. Note different lots may have different bid increments.

### **Section 35      Withdrawal of application**

This section provides how and when an applicant may withdraw from the auction. It also describes the consequences of withdrawing an application.

An applicant can withdraw at any time before the application deadline; however, it must inform the ACMA of this in writing. An applicant who has withdrawn will not be re-admitted to the auction.

Subject to sections 81 and 84, any deposit amount paid by an applicant under section 29 or in accordance with section 33 who withdraws before the application, or that is taken to have withdrawn under other sections of the Determination, will be refunded. Under section 25, any application fee paid by an applicant who withdraws will not be refunded.

## **PART 5 – ALLOCATION FOR A PRE-DETERMINED PRICE**

### **Section 36      Simplified outline of this Part**

This section sets out a simplified outline of Part 5.

### **Section 37      Allocation for a pre-determined price without an auction**

This section allows the ACMA, before the auction manager sets the start date and time for the first and second rounds of the auction under section 56, to determine that it will offer to allocate spectrum licences for lots for a pre-determined price if only one applicant has nominated the lots as its preferred lots. Although the ACMA must determine these matters before the start date and time for the first and second rounds of the auction are set, the ACMA may decide to take the subsequent steps under this Part during or after any auction conducted in accordance with Part 6 of the Determination.

Any offer of a spectrum licence made under this Part will be conditional on payment of the spectrum access charge (at the pre-determined price).

### **Section 38 ACMA must have regard to applicants' requirements**

In deciding under subsection 37(1) whether it may be able to allocate spectrum licences for certain lots without an auction, the ACMA must only have regard to applicants' indications of preferred lots provided through their preference nomination forms or through other information about preferred lots provided by applicants to the ACMA.

### **Section 39 The pre-determined price**

This section sets out how the pre-determined price is calculated for a spectrum licence. Under this Part, the amount determined in accordance with the allocation process for a spectrum licence is the sum of the starting prices for each lot (the starting price for each lot is set by the ACMA under section 26) to be included in that licence. The balance of the pre-determined price for a spectrum licence payable by an applicant is the pre-determined price less the amount of any deposit paid by the applicant.

### **Section 40 Offer of spectrum licence – licences for lots other than the 1800 MHz lots**

This section sets out the procedures that the ACMA will undertake when offering spectrum licences for a pre-determined price, for lots other than the 1800 MHz lots. The ACMA must send each relevant applicant, by registered mail, a draft of the spectrum licence or licences that may be allocated to the applicant and a notice stating:

- (a) that the applicant is offered a spectrum licence for the relevant lots to be included in that licence;
- (b) the amount of the pre-determined price payable for the licence offered;
- (c) the amount of any deposit paid by the applicant and held by the ACMA on behalf of the Commonwealth;
- (d) the balance of the pre-determined price.

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, to pay the balance of the pre-determined price for the spectrum licence in accordance with section 44. If an applicant does not accept the offer of a spectrum licence, section 45 applies.

If an applicant accepts the offer of the spectrum licence and agrees to pay and pays the balance of the pre-determined price, the applicant is entitled to be issued the spectrum licence offered to it in accordance with section 44.

### **Section 41 Offer of spectrum licence – licences for 1800 MHz lots**

This section sets out the procedures that the ACMA will undertake when offering spectrum licences for a pre-determined price for 1800 MHz lots.

If only one applicant is the single applicant for one or more 1800 MHz lots, that applicant will be notified and have five working days, or such longer time as determined by the ACMA, to give the ACMA a statement whether the applicant is an affiliate of an existing 1800 MHz licensee. The identities of the existing 1800 MHz licensees can be obtained from the Register of

Radiocommunications Licences maintained by the ACMA under the Act. It is a serious offence to give false or misleading information, under section 137.1 of the *Criminal Code*.

If, for some 1800 MHz lots, one applicant is the single applicant for the lots and, for other 1800 MHz lots, another applicant is the single applicant for the lots, the ACMA will give each of those applicants information about the other such single applicants for the different 1800 MHz lots, and the associates of those other applicants (for example, this will occur if one applicant is the only applicant for the lot in Dubbo, and another applicant is the only applicant for the lot in Tasmania). The applicants will then have five working days, or such longer time as determined by the ACMA, to give the ACMA a statement whether the applicant is an affiliate of any of those other single applicants for a 1800 MHz lot, or an existing 1800 MHz licensee. The identities of the existing 1800 MHz licensees can be obtained from the Register of Radiocommunications Licences maintained by the ACMA under the Act. It is a serious offence to give false or misleading information, under section 137.1 of the *Criminal Code*.

If an applicant fails to provide such a statement within the time permitted, the ACMA must not offer a spectrum licence to the applicant under this section (offers under section 40 are not affected).

If an applicant provides such a statement within the time permitted, and one of the following apply, then it may be offered a licence for the relevant 1800 MHz lots:

- (a) the applicant is not affiliated with another applicant for a 1800 MHz lot or with an existing 1800 MHz licensee;
- (b) the applicant is affiliated with one or more of those entities, but the aggregate of the lot size of all the 1800 MHz lots for which the applicant is the sole applicant, and the lot size of the 1800 MHz lots for which the other applicant is the sole applicant or the spectrum licence held by the existing 1800 MHz licensee, does not exceed the allocation limits.

Based on the lots on offer, the 1800 MHz allocation limits are only likely to be exceeded where one or other of the applicants is, or is affiliated with, an existing 1800 MHz licensee.

If the applicant can be offered a spectrum licence, the ACMA will send the applicant, by registered mail, a draft of the spectrum licence for the lots that may be allocated to the applicant and a notice stating:

- (a) that the applicant is offered a spectrum licence for the relevant lots to be included in that licence;
- (b) the amount of the pre-determined price payable for the licence offered;
- (c) the amount of any deposit paid by the applicant and held by the ACMA on behalf of the Commonwealth;
- (d) the balance of the pre-determined price.

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, to pay the balance of the pre-determined price for the spectrum licence in accordance with section 44. If an applicant does not accept the offer of a spectrum licence, section 45 applies.



If an applicant accepts the offer of the spectrum licence and agrees to pay and pays the balance of the pre-determined price, the applicant is entitled to be issued the spectrum licence offered to it in accordance with section 44.

#### **Section 42 Offer of reduced spectrum licence – licences for 1800 MHz lots**

This section applies if the applicant provided the statement required under section 41, but issuing a licence for all of the relevant lots in the 1800 MHz band would exceed the 1800 MHz allocation limits. The ACMA must identify each lot which could be included in a spectrum licence issued to the applicant without exceeding the 1800 MHz allocation limits. If no lots can be identified in this section, then section 43 applies.

If one or more lots can be identified, the ACMA will send the applicant, by registered mail, a draft of the spectrum licence for those lots that may be allocated to the applicant and a notice stating:

- (a) that the applicant is offered a spectrum licence for the relevant lots to be included in that licence;
- (b) the amount of the pre-determined price payable for the licence offered;
- (c) the amount of any deposit paid by the applicant and held by the ACMA on behalf of the Commonwealth;
- (d) the balance of the pre-determined price.

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, to pay the balance of the pre-determined price for the spectrum licence in accordance with section 44. If an applicant does not accept the offer of a spectrum licence, section 45 applies.

If an applicant accepts the offer of the spectrum licence and agrees to pay and pays the balance of the pre-determined price, the applicant is entitled to be issued the spectrum licence offered to it in accordance with section 44.

Section 76 (Unallocated spectrum) applies to any lots that, if they had been included in a licence allocated to the applicant, would have exceeded the allocation limits.

#### **Section 43 No offer of a spectrum licence – licences for 1800 MHz lots**

This section sets out the process for notifying the applicant where if the applicant were to be issued a spectrum licence for any of the 1800 MHz lots for which it was the sole applicant, the 1800 MHz allocation limits would have been exceeded, and that as a result a licence will not be offered to the applicant under Part 5 for those lots. The allocation of other spectrum licences is not affected.

#### **Section 44 Payment of the balance of the pre-determined price**

This section sets out the arrangements where an applicant accepts the offer of a licence or licences under Part 5 at the pre-determined price. The ACMA must notify the applicant by registered mail of the balance of the pre-determined price payable for all spectrum licences that the applicant is entitled

to be issued. The balance of the pre-determined price for a spectrum licence is payable no later than 10 days after the date the applicant is notified.

#### **Section 45 Allocation if offer refused**

This section sets out the procedures that will apply if an applicant does not accept, in accordance with subsection 40(4), subsection 41(6) or subsection 42(5), a spectrum licence that has been offered to it through the pre-determined price allocation process. In this case, section 76 (Unallocated spectrum) applies to a lot that would have been included in the spectrum licence.

#### **Section 46 Default**

This section outlines the procedure if an applicant does not pay the full balance of the pre-determined price for a spectrum licence or licences in accordance with section 44, where an offer has been accepted under subsection 40(4), subsection 41(6) or subsection 42(5). In this case the applicant ceases to be entitled to be allocated the spectrum licence or licences, but the allocation of spectrum licences to other applicants is not affected. The lots included in the spectrum licence or licences are taken to be unallocated spectrum under section 76. Where this occurs the ACMA may retain any deposit made by the applicant or enforce a deed of financial security given by the applicant, in accordance with section 81.

#### **Section 47 Publication of results**

The ACMA will release the pre-determined price allocation results to the public. This section sets out the information that the ACMA must announce or publish. The information released will include the names of the persons to whom spectrum licences are to be issued, the spectrum allocated to each person and the pre-determined price for each spectrum licence to be issued to that person.

### **PART 6 – AUCTION PROCEDURES**

#### **Division 1 Simplified outline**

##### **Section 48 Simplified outline of this Part**

This section sets out a simplified outline of Part 6.

#### **Division 2 Application of this Part**

##### **Section 49 Lots to which this Part applies**

This Part applies in relation to the first product lots, second product lots and third product lots. However, this Part does not apply in relation to a lot if the lot may be included in a spectrum licence that is, or is to be, offered to an applicant under Part 5 or if the lot is not a preferred lot for any bidder.

### **Division 3     Registration of bidders**

#### **Section 50     Register of bidders**

This section provides that the ACMA must maintain an electronic register of bidders. It also provides a list of details that the register must contain.

Bidders must inform the ACMA if they become aware of any change to the details included on the register, and provide updated information. The ACMA must update the register accordingly.

#### **Section 51     Registration process**

This section sets out the requirements that must be satisfied in order for an applicant to be registered as a bidder. In order for an applicant to be registered as a bidder:

- (a) the applicant must have submitted a valid application (including a preference nomination form) and not withdrawn that application;
- (b) the applicant must have paid the applicable deposit or provided a deed of financial security, or a combination of the two, in accordance with the requirements in sections 6, 7, 29 and 33;
- (c) the applicant must not be the only applicant to have nominated each of its preferred lots as one of its preferred lots. That is, for at least one of lots nominated by the applicant, there must be at least one other applicant that also nominated the lot.

An applicant will only become a bidder when its details are entered in the register. The ACMA must not register an applicant as a bidder until after the application deadline has passed.

This section also provides that the ACMA must, after the application deadline, notify an applicant that it is registered as a bidder. At that time, the ACMA will provide bidders with the contact details for the ACMA, and a copy of the bidder's information recorded in the register for that bidder. Bidders will also receive information and tools to access and use the auction system, as well as information explaining how to submit an offline bid if they are unable to use the auction system during the auction.

The information provided to a bidder under this section for the purpose of participating in the auction is *confidential information* under section 16.

#### **Section 52     Bidder to notify ACMA if register incorrect**

The section provides that a bidder has an ongoing responsibility to tell the ACMA if any of the information about the bidder or its associates on the register of bidders is incorrect. If information is incorrect, the bidder must immediately give the ACMA the correct information. Information about a bidder's associates will only be included on the register if the bidder has nominated a lot in the 1800 MHz band (see paragraph 50(2)(h)).

### **Section 53      Preparation for bidding**

This section provides that the ACMA will give each applicant an opportunity to try out the auction system prior to the start of the auction. In addition, the ACMA intends to provide bidders with a user guide to assist in accessing and using the auction system.

### **Section 54      Security of auction**

This section imposes an obligation on bidders to ensure that the security of the auction system is maintained. A bidder must keep secure any items used to access the auction system. If such items are lost or stolen, a bidder must immediately notify the ACMA.

## **Division 4      Setting elements of the auction**

### **Section 55      Auction procedures**

This section provides that the first round of the auction starts on the date and time for that round set under subsection 56(1). The rounds of the auction will be scheduled and conducted in accordance with the rules in Schedule 1 to the Determination.

### **Section 56      First and second rounds**

This section specifies that the auction manager must set the start date and time of the first and second rounds of the auction following the preference deadline. 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 first round starts.

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

### **Section 57      Auction manager's discretion to accept bids**

Subsection 57(1) recognises that, during the auction, circumstances may arise that prevent a bidder from being able to use the auction system to submit a bid for a round. For example, a sudden power blackout may cut a bidder's computer access to the auction system. This section gives the auction manager the discretion to permit a bidder to bid for a round by an alternative method. Bidders will receive information about how they can request to submit a bid if they are unable to use the auction system, once they are registered under section 51.

Under subsection 57(2), the auction manager also has discretion to permit a bidder to submit a bid after the round has ended, but only if satisfied that technical or communication problems have prevented the bidder from submitting a bid during the round. Bids that have been submitted in this way will be regarded as valid bids made during the round for the purposes of calculating the results of a round just ended. However, a bidder will not be permitted to make a bid in this way after the results of the relevant round have been published to all bidders. Details of the information about the outcome of the round to be provided to bidders are outlined in Schedule 1.

## **Section 58      Action that auction manager may take in exceptional circumstances**

Exceptional circumstances may arise that affect the auction. If the auction manager is satisfied that this has occurred, subsection 58(1) allows the auction manager to take a range of actions to deal with such circumstances. These actions can include making corrections to the results of the current round of the auction and the information received by a bidder after the round just ended, stopping the current round of the auction and restarting a round, cancelling the results of one or more rounds and restarting the auction from the point before those rounds, restarting the auction from the first round, or stopping the auction entirely.

Subsection 58(2) sets out examples of exceptional circumstances that could permit the auction manager to take discretionary action under this provision, including significant technical difficulty with the auction system or a breach of confidentiality obligations under section 17. However, the examples given are not exhaustive and do not preclude other circumstances from being regarded as exceptional.

## **Division 6      Affiliations during the auction**

### **Section 59      Requirement to report affiliation – 1800 MHz band**

Under this provision, during the auction period a bidder is obliged to immediately tell the ACMA in writing if the bidder, having nominated for one or more 1800 MHz lots, believes that it may be affiliated with an existing 1800 MHz licensee, noting the identity of the licensee and giving details of the affiliation.

Under this provision, during the auction period a bidder is obliged to immediately tell the ACMA in writing if the bidder, having nominated for one or more 1800 MHz lots, believes that it may be affiliated with another bidder for a 1800 MHz lot, noting the identity of the other bidder and giving details of the affiliation.

### **Section 60      Auction continues despite possible affiliation**

This section prescribes what happens if the ACMA becomes aware during the auction period that two or more bidders for 1800 MHz lots, or one such bidder and an existing 1800 MHz licensee, may be affiliated. The auction will proceed normally and any bidders who may be affiliated are permitted to continue to participate.

### **Section 61      ACMA consideration of affiliation**

If the ACMA has reason to believe that an affiliation of the kind described above exists during the auction period, and a bidder had not made this known to the ACMA before the commencement of the auction period, the ACMA must notify the relevant bidders in writing and tell them the basis on which the ACMA believes that the bidder is affiliated with either another bidder or an existing 1800 MHz licensee.

If a bidder notified the ACMA about a possible affiliation with another bidder under section 59(1), or with an existing licensee under subsection 59(2), but the ACMA does not consider that there is an affiliation, the ACMA must tell the bidder that the ACMA does not consider it to be affiliated.

## **PART 7 – PROCEDURES AFTER AUCTION**

### **Division 1 Simplified outline**

#### **Section 62 Simplified outline of this Part**

This section sets out a simplified outline of Part 7.

### **Division 2 Application of this Part**

#### **Section 63 This Part applies if an auction is conducted**

Part 7 applies only if an auction is conducted under Part 6.

### **Division 3 Confirmation of auction results**

#### **Section 64 Notice and refunds to unsuccessful bidders and withdrawn applicants**

This section sets out the procedure that the ACMA must follow in relation to unsuccessful bidders or withdrawn applicants. Unsuccessful bidders will be notified as soon as practicable after the auction period that they have not won any spectrum and that their confidentiality obligations under section 17 have ended. The ACMA must refund any deposit made by an unsuccessful bidder, within a maximum period of 6 months after notifying the bidder that they are unsuccessful, unless the ACMA has decided to retain the deposit under section 81 due to a breach of the Determination.

Similarly for withdrawn applicants, 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. If an applicant that withdrew, or was taken to have withdrawn, its application paid a deposit, the ACMA must refund the payment no later than 6 months after sending the notice under this section unless the ACMA has made a decision to retain the deposit under section 81 (see also section 35).

#### **Section 65 Winning bidder to make statement about affiliations – 1800 MHz lots**

Under this section, the ACMA is required to give each winning bidder of a lot in the 1800 MHz band (**1800 MHz winning bidder**) details of the identity of all other 1800 MHz winning bidders and details of those bidders' associates as soon as practicable after the end of the auction period. Each 1800 MHz winning bidder is then required to provide the ACMA with a statement to say whether it is affiliated with any other 1800 MHz winning bidder or an existing 1800 MHz licensee and, if so, to provide details of that affiliation. The ACMA will not issue a spectrum licence to an 1800 MHz winning bidder unless this statement has been received. This section also sets out that the ACMA must state a deadline for the receipt of the statement not less than 10 working days after the date of the request. Giving false or misleading information to the ACMA may constitute a serious offence under the *Criminal Code*.

The purpose of this section is to enable the ACMA to obtain information to ensure that spectrum licences issued under the Determination comply with the 1800 MHz allocation limits set by the Minister in the 1800 MHz spectrum limits direction.

## **Section 66 Notification that winning bidder is affiliated with existing licensee or another winning bidder – 1800 MHz lots**

This section provides that the ACMA must notify 1800 MHz winning bidders if it is satisfied that they are affiliated. This notification will provide details of the basis on which that decision has been made. If the ACMA is satisfied that a 1800 MHz winning bidder is affiliated with an existing 1800 MHz licensee, the ACMA must notify the winning 1800 MHz bidder in writing and tell the bidder the basis on which the ACMA is satisfied that the bidder and the existing 1800 MHz licensee are affiliated.

## **Section 67 Consequences of affiliation between winning bidders or between winning bidders and existing licensees – 1800 MHz lots**

The allocation limits may affect the allocation of spectrum licences to 1800 MHz winning bidders who have been notified that the ACMA is satisfied that they are affiliated (**affiliated 1800 MHz winning bidders**). The ACMA must not issue spectrum licences to the affiliated 1800 MHz winning bidders that would exceed the 1800 MHz allocation limits.

The 1800 MHz allocation limits may also affect the allocation of spectrum licences to a 1800 MHz winning bidder that is affiliated with an existing 1800 MHz licensee. The ACMA must not issue spectrum licences to this winning bidder that would exceed the allocation limits.

Section 67 applies where issuing spectrum licences to the affiliated 1800 MHz winning bidders, or to a 1800 MHz winning bidder that is affiliated with an existing 1800 MHz licensee, would exceed the 1800 MHz allocation limits. Given the lots on offer in this process, the 1800 MHz allocation limits are likely only to be exceeded where there is an affiliation with an existing 1800 MHz licensee (who may also be a 1800 MHz winning bidder).

Where section 67 applies, the ACMA must work out which lots *can* be included in a spectrum licence to be issued to a 1800 MHz winning bidder without exceeding the 1800 MHz limits. If no such lots exist, the ACMA must not issue a spectrum licence for any 1800 MHz lot to the winning bidder (spectrum licences for lots in other bands are not affected), and section 76 (Unallocated spectrum) applies to the lots.

If one or more lots do exist that can be included in a spectrum licence to be issued without exceeding the 1800 MHz limits, the 1800 MHz winning bidder is entitled to be issued a spectrum licence for those lots following the process set out in Division 4 of Part 7, which requires payment of the balance of the winning price for all the lots won by the 1800 MHz winning bidder (including those 1800 MHz lots not able to be included in the licence, and those lots in other bands). For those lots that cannot be included in the licence, section 76 (Unallocated spectrum) applies to the lots.

## **Division 4 Payment and issue of spectrum licences**

### **Section 68 The winning bid price for a lot**

If there is only one bid on the lot, the **winning bid price** for a lot won by a bidder at auction is the starting price for the lot. If there is more than one bid on the lot, the **winning bid price** for a lot won by a bidder at auction is the highest bid made for the lot by any bidder, during any round, other than the **final high bid**. The final high bid is defined in Schedule 1 to the Determination.



## **Section 69      The winning price and the balance of the winning price**

The *winning price* for a winning bidder is the sum of the winning bid prices for the lots won by the bidder.

The *balance of the winning price* for a winning bidder is the winning price for the bidder less the amount of any deposit paid by the winning bidder.

## **Section 70      Sufficient deposit—issue of spectrum licence without further payment**

This section provides for refunds and the entitlement to be issued spectrum licences where the balance of the winning price is equal to or less than zero.

If the balance of the winning price is less than zero, the ACMA must refund that part of the deposit that is in excess of the total of the winning price for lots won by the winning bidder. The bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment.

If the balance of the winning price for any winning bidder is zero, the bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment.

## **Section 71      Payment of balance of winning price**

This section sets out the arrangements for notifying winning bidders of the balance of the winning price, where that amount is greater than zero (i.e., it is more than the bidder's deposit) and that it must be paid to the ACMA within 20 days after the date of the notice (which is sent by registered mail).

If the ACMA becomes aware that a notice given to a winning bidder under subsection (1) (i.e., the notice setting out the balance of the winning price, among other things) contains a material error, the ACMA must give the winning bidder a revised notice by registered mail (subsection (3)). If a revised notice is given under subsection (3) the balance of the winning price must be paid to the ACMA:

- (a) if the revised notice is given within 20 working days after the date of the revised notice – 30 days after the date of the original notice; and
- (b) in any other case – 10 working days after the revised notice.

## **Section 72      Issue of spectrum licence**

If a winning bidder pays the balance of the winning price, in accordance with subsection 71, the winning bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder.

## **Section 73      Default**

This section sets out the consequences that apply if a winning bidder does not pay the balance of the winning price in accordance with section 71. In this case, the spectrum licence is not allocated to the winning bidder, the allocation of spectrum licences under the Determination to other applicants is not affected, and section 76 applies to spectrum that, but for section 73, would have been included in a spectrum licence allocated to the winning bidder.

## **Section 74      Publication of auction results**

The ACMA will release the auction results to the public. This section sets out the information that the ACMA must announce or publish. The information released will include the names of winning bidders, the spectrum allocated to each winning bidder, and the winning price for each lot won by each winning bidder.

## **PART 8 – MISCELLANEOUS**

### **Section 75      Simplified outline of this Part**

This section sets out a simplified outline of Part 8.

### **Section 76      Unallocated spectrum**

There may be circumstances in which spectrum lots offered at auction are not allocated. For example, unallocated lots could arise where there is no person who nominates a lot as its preferred lot, or where a winning bidder does not pay the balance of the winning price, in accordance with section 71, or where issuing a spectrum licence for a 1800 MHz lot would exceed the 1800 MHz allocation limits.

This section provides that any parts of the spectrum that are offered at the auction or for a pre-determined price but are not allocated may be allocated at a later date by the ACMA in accordance with Schedule 4.

### **Section 77      Bidders must not misuse auction system**

This section provides that a bidder must only access and use the auction system in accordance with the information provided by the ACMA under section 51, which requires the ACMA to give the bidder certain information once they are registered to participate in the auction. A bidder must not attempt to interfere with, disrupt or damage the auction system, or use it to breach a law of the Commonwealth.

### **Section 78      ACMA may obtain information from applicants and bidders**

The ACMA may wish to obtain information or documents from an applicant or an applicant who becomes a bidder for a number of reasons, including for the purposes of determining whether any contravention of the Determination has occurred, or considering whether two applicants are affiliated.

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 the Determination, the ACMA may, by written notice, require the applicant or bidder to give to the ACMA, within the period and in the manner and form specified in the notice, any such information or to produce to the ACMA, within the period and in the manner specified in the notice, any such documents.

The ACMA may require the information or documents requested of an applicant or bidder under this section to make decisions which could have a significant impact on their participation in the auction. This provision therefore includes a note pointing out that if a requirement in a notice given under this section is breached, including failure to provide available information or documentation when requested, the ACMA may take action under section 81 of the Determination.

The ACMA may vary the notice.

### **Section 79 Use of information and documents by ACMA**

Under this section, the ACMA may use any information or documents it obtains in the performance of the ACMA's functions under the Determination for the purposes of the Determination, including disclosing or publishing information or documents as provided for in the Determination. The ACMA may also use the information or documents to perform its functions in relation to a spectrum licence issued as a result of the allocation process under the Determination. The ACMA may keep a document obtained under this section for as long as necessary for the performance of any of its functions or exercise of its powers under the Determination or the Act.

The ACMA may also disclose information or documents as permitted by Part 7A of the *Australian Communications and Media Authority Act 2005*, or as otherwise authorised by law.

### **Section 80 ACMA to provide information to ACCC on request**

In accordance with subsection 60(7) of the Act, section 80 requires the ACMA to provide specified information to the ACCC, where the ACCC has requested the information in relation to any applicant or bidder. Information that may be requested includes forms and deeds submitted by an applicant to participate in or during the allocation process, information about an applicant's affiliations, and information about any breach of confidentiality obligations. It also includes information about bidding during the auction and information about the outcome of the procedures in Parts 5 and 7, and the procedures for allocation of spectrum licences under Schedule 4.

### **Section 81 Retention of deposit or enforcement of deed for breach of procedures**

This section sets out the action that the ACMA may take for a breach of provisions of the Determination, such as the auction rules or related procedures. The ACMA may, on behalf of the Commonwealth, retain a deposit paid, or enforce a deed of financial security given, by an applicant or bidder where it is satisfied that an applicant or bidder, or a related person, breached a provision of the Determination and that the breach affected or could have affected the outcome of the allocation process.

The ACMA may also retain the deposit or enforce the deed of financial security if a successful applicant failed to pay the balance of the pre-determined price as required under subsection 44.

The ACMA may also retain the deposit or enforce the deed of financial security if the bidder is a winning bidder who failed to give the statement required under section 65 about affiliations with other bidders and existing 1800 MHz licensees.

The ACMA may also retain the deposit or enforce the deed of financial security if a winning bidder failed to pay the balance of the winning price as required under paragraph 71.

The ACMA may also retain the deposit or enforce the deed of financial security if 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 if the applicant or bidder failed to comply with a requirement in a notice given under subsection 78, requiring the production of information or documents.

The ACMA must notify the applicant or bidder, in writing, of a decision under subsection 81 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 44 (pre-determined price payments) – the day the notice was given; or
  - (ii) in any other case – the end of the auction period; and
- (b) six months after the day on which the breach or failure mentioned in subsection 81(1) occurred.

Any amount retained or obtained by the ACMA under section 81 is forfeited to the Commonwealth unless the Federal Court orders its return under section 84.

### **Section 82 Effect of retention on allocation to applicants for pre-determined price**

This section provides that, if the ACMA makes a decision under subsection 81(1) in relation to an applicant notified under subsection 44(1), the ACMA must not issue a spectrum licence to the applicant, and section 76 applies in relation to the lots that would have been included in a spectrum licence to be allocated to the applicant. This section takes precedence over subsections 40(5), which otherwise would require the ACMA to issue a licence to the applicant.

### **Section 83 Effect of retention on winning bidders**

This section provides that, if the ACMA makes a decision under subsection 81(1) in relation to a winning bidder, the ACMA must not issue a spectrum licence to the winning bidder; and section 76 applies in relation to the lots that would have been included in a spectrum licence to be allocated to the winning bidder. This section takes precedence over subsections 67(4), 70(1) and 70(2), and section 72, which otherwise would require the ACMA to issue a licence to the winning bidder.

### **Section 84 Application to Federal Court for return of retained amount**

This section provides that, where an applicant or bidder is notified by the ACMA of its decision to retain a deposit or enforce a deed of financial security, the applicant 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.

On application, the 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.

This section does not enable the Federal Court to order that a spectrum licence be issued to an applicant or bidder. This section also does not remove any existing jurisdiction of a court.

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## **Section 85      Liability of ACMA, auction manager and the Commonwealth**

This section provides that neither the ACMA, the auction manager nor the Commonwealth, is liable to pay damages or costs arising from any act or omission of any person in relation to the allocation procedures set out in the Determination.

## **Section 86      Other rights not affected**

This section provides that the Determination does not limit any right of action or remedy that the ACMA or the Commonwealth has against any person. For example, it does not limit any right of action or remedy the ACMA or the Commonwealth may have in relation to a deed of acknowledgment, deed of financial security, or deed of confidentiality given under the Determination, or to enforce any licence condition of a licence issued pursuant to the Determination.

## **Section 87      Auction manager may delegate functions and powers**

This section provides that the auction manager may delegate any of their functions and powers under the Determination to a member of the ACMA or a member of the ACMA staff that holds or acts in an Executive Level 1, Executive Level 2 or SES position.

The auction manager is required to exercise the powers and functions conferred on him or her under the Determination, set out below:

	<b>Provision</b>	<b>Power</b>
1.	Subparagraphs 6(2)(b)(i) and (ii)	Approve alternative document formats for the provision of documents that are emailed to the ACMA under the Determination.
2.	Subsection 56(1)	Set the start date and time of the first and second rounds of the auction.
3.	Subsection 57(1)	Permit a bidder to make a bid using a method other than the auction system during a round, if satisfied a bidder is not able to make a bid using the auction system.
4.	Subsection 57(2)	Permit a bidder to make a bid after the end of a round, if satisfied the bidder could not make the bid during the round because of technical or communication problems.
5.	Subsection 58(1)	Take action (including correcting auction round results, suspending, restarting or cancelling the auction) if satisfied the auction is affected by exceptional circumstances.
6.	Schedule 1, subclause 1(2)	Schedule rounds of the auction.
7.	Schedule 1, subclause 1(5)	Modify the schedule of rounds of the auction.
8.	Schedule 1, subclauses 2(9), 2(11) and 2(13)	Set the start and end time of each round.
9.	Schedule 1, subclause	Declare a recess day.

	3(1)	
10.	Schedule 1, subclause 6(1)	Change the bid increment percentage.

These powers are largely procedural and may need to be exercised quickly during the auction in order to ensure the timely, orderly and efficient conduct of the auction of the spectrum licences under this Determination. For this reason, the auction manager may decide to delegate some or all of his or her powers to ACMA members or staff members to ensure that any temporary absence or incapacity to exercise these powers does not affect the smooth running of the auction.

The auction manager will only be able to delegate functions and powers to members of the ACMA, or to members of the ACMA staff at Executive Level 1 (**EL1**), Executive Level 2 or Senior Executive Service officer level employed under the *Public Service Act 1999*. Enabling delegation of the auction manager's powers to EL1 level allows the auction manager to delegate procedural powers to a subordinate member of the auction team at EL1 level who is also versed in the operation of the auction software.

## **SCHEDULE 1            AUCTION RULES**

This Schedule describes the detailed rules for conducting the auction, and operates in conjunction with related procedures that are referred to in Part 6 of the Determination. It also defines some terms that are relevant both to the Schedule and other Parts of the Determination (such as Part 7, and the calculation of the spectrum access charge).

### **Part 1—Auction arrangements**

#### **Clause 1            Schedule for rounds of the auction**

The SCA methodology for the auction requires a series of rounds to be held, during which bidders may place a bid on lots in accordance with Schedule 1. Clause 1 provides for the scheduling of rounds of the auction. Rounds must only occur on a working day (as defined in subsection 4(1)) other than a recess day, and will start and finish between 9 am and 5 pm. The scheduling of the rounds between those times is at the auction manager's discretion. There is no minimum or maximum duration for each round, nor for the interval between rounds. There is no upper or lower limit on the number of rounds that can be held on any day.

All bidders will be notified via the auction system of the anticipated schedule of rounds for a given day a minimum of one hour before the first round of the day, subject to section 56, which deals with the notice to be given of the first and second rounds of the auction. This clause also allows the auction manager to alter the schedule of rounds. However, if this occurs, the auction manager must inform bidders of the change as soon as practicable.

#### **Clause 2            Rounds of the auction**

This clause provides that each round will be for bids on a lot or lots. The auction will be conducted in three stages:

- (a) Stage 1: in this stage, each bidder that has nominated a first product lot will be able to place bids on each of those lots, in accordance with this Schedule. The first product lots are set out in subsection 4(3) of the Determination; they are the five 1800 MHz lots, and the following three 2 GHz lots:
  - (i) the 2 x 10 MHz lot in Canberra (Lot 6, CBRB01);
  - (ii) the 2 x 10 MHz lot in Darwin (Lot 7, DARW01);
  - (iii) the 2 x 10 MHz lot in Hobart (Lot 8, HOBA01).

Stage 1 continues until no bidder can place a bid on any first product lot. A bid will not be able to be placed on a lot if there is a winning bidder for the lot, or if no person placed a bid on the lot in the first round of Stage 1. If no first product lots are to be offered in the auction (whether because no applicant nominated the first product lots as its preferred lots, or because Part 5 applies to the first product lots), then Stage 1 consists of a single round in which no person can bid.

- (b) Stage 2: in this stage, each bidder that nominated a second product lot will be able to place bids on each of those lots, in accordance with this Schedule. The second product lots are set out in subsection 4(4) of the Determination; they are the remaining six 2 GHz lots.

Stage 2 continues until no bidder can place a bid on any second product lot. A bid will not be able to be placed on a lot if there is a winning bidder for the lot, or if no person placed a bid on the lot in the first round of Stage 2. If no second product lots are to be offered in the auction (whether because no applicant nominated the second product lots as its preferred lots, or because Part 5 applies to the second product lots), then Stage 2 consists of a single round in which no person can bid.

- (c) Stage 3: in this stage, each bidder that nominated a third product lot will be able to place bids on each of those lots, in accordance with this Schedule. The third product lots are the 2.3 GHz lots and the 3.4 GHz lots (subsection 4(5) of the Determination).

Stage 3 continues until no bidder can place a bid on any third product lot. A bid will not be able to be placed on a lot if there is a winning bidder for the lot, or if no person placed a bid on the lot in the first round of Stage 3. If no third product lots are to be offered in the auction (whether because no applicant nominated the third product lots as its preferred lots, or because Part 5 applies to the third product lots), then Stage 3 consists of a single round in which no person can bid.

The auction ends after the end of Stage 3.

A bidder may only make a bid on a lot if it is one of the bidder's preferred lots, as set out in its preference nomination form (as affected by operation of the 1800 MHz allocation limits, as discussed above).

Clause 2 also requires the auction manager to provide specific information to bidders before and after rounds, which may be used by bidders in assessing whether to make a bid in the next round.

Before the start time of each round, the auction manager must use the auction system to provide to each bidder who nominated a lot that is the subject of the round the following information:

- > the start time of the round;
- > the end time of the round;
- > the specified price that will apply to the each lot in the round;
- > for each round other than the first round of a stage, the specified price that applied to each lot in the previous round;
- > the total number of bidders that have nominated each lot in the round as a preferred lot;
- > the number of bidders remaining in the auction for each lot in the round after the end of the previous round; and
- > any other information the ACMA considers necessary or convenient to conduct the auction.



During a round, no bidder will know the amount of any other bidder's bid, or whether any other bidder has made a bid.

After each round, the auction manager must use the auction system to provide to each bidder who nominated a lot that is the subject of the round the following information:

- > the bid made by the bidder during the round (if any);
- > if, as a result of the round, the bidder is the winning bidder for a lot – the winning price for that lot;
- > for each round other than the final round for a lot– the number of bidders remaining in the auction for the lot after the round;
- > any other information the ACMA considers necessary or convenient to conduct the auction.

### Clause 3 Recess days

This clause provides that the auction manager may declare a day to be a *recess day* (whether or not the day is a working day). Before the auction manager declares a recess day, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received. If the auction manager declares a recess day the auction manager must inform all bidders of this decision.

## Part 2—Bidding in the auction

### Clause 4 When bidder cannot make a bid on a lot

The nature of the SCA methodology adopted by the ACMA is such that bidders can make a continue bid or an exit bid. A continue bid in a round is a bid equal to or greater than the specified price for the lot for the round. The specified price for a lot for a round is the sum of the specified price for the lot for the previous round (or the starting price, where the round is the first round) plus the specified price for the previous round multiplied by the bid increment percentage. An exit bid in a round is a bid equal to or greater than the specified price for the lot for the previous round, but less than the specified price for the lot in that round.

For example, consider a lot with a starting price of \$100, and a bid increment percentage of 10%.

<i>Round</i>	<i>Specified price for the previous round, or starting price for the first round</i>	<i>Specified price for the round</i>	<i>Exit bid for the round</i>	<i>Continue bid for the round</i>
1	\$100	\$100 + 10% of \$100 = \$110	Equal to or greater than \$100, but less than \$110	Equal to or greater than \$110
2	\$110	\$110 + 10% of \$110 = \$121	Equal to or greater than \$110, but less than \$121	Equal to or greater than \$121

<i>Round</i>	<i>Specified price for the previous round, or starting price for the first round</i>	<i>Specified price for the round</i>	<i>Exit bid for the round</i>	<i>Continue bid for the round</i>
3	\$121	\$121 + 10% of \$121 = \$133.10	Equal to or greater than \$121, but less than \$133.10	Equal to or greater than \$133.10

Note that specified prices in the auction will be rounded up to the next thousand, and bids in the auction may only be in multiples of \$1000 (see clauses 5 and 9). The minimum starting price is \$1000.

Any bid above the specified price for a round is a continue bid at an advance price.

Clause 4 of Schedule 1 provides that if, in a round, either a bidder does not make a bid on a lot, or a bidder is an exit bidder for a lot in the circumstances set out in clause 10 (that is, the bidder has made an exit bid), the bidder cannot make a bid on the lot in any subsequent round of the auction. A bidder's failure to bid on a certain lot in a round has no bearing on the bids on any other lot by that bidder, whether in that round or another round.

An exit bid on a lot may have been a continue bid on the lot in a previous round of the auction, in accordance with clause 8.

An exit bid made by the bidder may still be the final high bid for the relevant lot, and in that case the bidder would be the winning bidder for the lot (see below).

#### **Clause 5 Starting price and specified price**

This clause provides that a bid below the starting price on a lot will not be accepted.

This clause also provides for how the *specified price* for each lot is to be calculated in each stage of the auction. As mentioned above, the specified price for a lot in a round is the sum of the specified price for the lot for the previous round (or the starting price, where the round is the first round) plus the specified price for the previous round multiplied by the bid increment percentage, rounded up to the next thousand. If a round is the final round for bids on a lot, there is no specified price for the lot in any later round of the auction.

#### **Clause 6 Changing bid increment percentage to vary specified prices**

This clause provides that the auction manager may, at any time during the auction, change the bid increment percentage set under section 34 of the Determination, to vary the specified price on a lot in future rounds. During the auction, the auction manager may vary these amounts after consulting with bidders. Adjusting the level of these bid increments may be used to influence the speed at which the auction progresses.

Before making any change, the auction manager must tell bidders of the proposed change, ask bidders for their comments on the proposal within the time (being not less than one hour) set by the auction manager, and take into account any comments received on the proposal. The auction manager must notify all bidders of the change before the round when the change takes effect.

## Clause 7 General rules about bidding

A bidder may bid only on the lots the bidder nominated in its preference nomination form, and subject to whether the bidder has made an exit bid on a lot (which, as mentioned above, would prevent the bidder from making any future bids on the lot).

A bid is taken to have been made when the bidder's bid for a round of the auction has passed data validation checks that are performed by the auction system, subject to subsections 57(1) and 57(2) (which allow the auction manager to accept bids by a method other than the auction system and accept bids after the round has closed in certain circumstances).

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 is the bid in the auction system at the end time of a round.

## Clause 8 Continue bid made at greater than specified price

As mentioned above, bidders are allowed to bid above the specified price for the lot in a round. A bidder may make a continue bid 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. This continue bid will constitute, 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. This continue bid will also, 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, constitute an exit bid made on that lot in that round.

For example, consider a lot with a starting price of \$100, and a bid increment percentage of 10%. In the first round, a bidder makes a bid of \$125 (**advance price continue bid**).

<i>Round</i>	<i>Specified price for the previous round, or starting price for the first round</i>	<i>Specified price for the round</i>	<i>An advance price continue bid in the first round of \$125 is taken to be...</i>
1	\$100	\$110	A continue bid, being greater than \$110
2	\$110	\$121	A continue bid, being greater than \$121
3	\$121	\$133.10	An exit bid, being greater than \$121 but less than \$133.10.

Note that specified prices in the auction will be rounded up to the next thousand, and bids in the auction may only be in multiples of \$1000 (see clauses 5 and 9).

However, a bidder may, in any subsequent round after making the advance price continue bid, make a contrary bid that takes the place of the bid deemed to be made.

## Clause 9 Validity of bids

This clause prescribes the requirements for a bid to be valid. A bid in a round is valid if for the first round for any lot the bid is not less than the starting price for the relevant lot. For rounds other than

the first round, for any lot, the bid is valid if it is not less than the specified price of the relevant lot for the previous round (that is, the bid must be either an exit bid or a continue bid). A bid for a round must be received by the auction system between the start time and end time of the bidding period for the round (subject to subsection 57(2) of the Determination). A bid must be a multiple of one thousand dollars.

**Clause 10      Exit bids – exclusion from further participation**

If, in a round, a bidder makes an exit bid for a lot (**the exit bidder**) and two or more bidders make a continue bid for the lot, the exit bidder cannot make any bid on the lot in any subsequent round.

**Part 3—Determining the winning bidder for a lot**

**Clause 11      Final round for bids on a lot, final round of a stage, and final high bid**

This clause sets out the rules for determining when bidding on a lot ends, the identity of the winning bidder and the final high bid.

The **final round for bids on a lot** is the first round where:

- (a) there is one bid made for the lot; or
- (b) one or more exit bids, and no more than one continue bid, are made for the lot; or
- (c) no bids are made for the lot.

If two or more continue bids are made for the lot during a round, there will be at least one further round for that lot.

A stage ends when, for each lot in the stage, the final round for bids on a lot has occurred.

The **final high bid** is the bid that wins the lot, and is used in Part 7 of the Determination to work out the winning price for the lot (the amount of the next highest bid is the winning price). The **final high bid** for a lot is whichever of the following applies:

- (a) if one bid was made on the lot in the final round for the lot – that bid is the final high bid; or
- (b) if one continue bid was made on the lot in the final round for the lot (regardless of how many exit bids were made in that round) – that continue bid is the final high bid; or
- (c) if each of the following applies:
  - (i) no continue bid was made on the lot in the final round for bids on the lot; and
  - (ii) two or more exit bids were made on the lot in the final round for the lot; and
  - (iii) one of those exit bids (**the high exit bid**) was greater than each of the other exit bids;  
the high exit bid is the final high bid.

That is, generally speaking, the highest bid made on the lot will be the final high bid for the lot. However, in the circumstance where no continue bid is made on the lot in the final round and there are two or more exit bids that are equal and higher than any other exit bid, the final high bid for the lot is worked out in accordance with clause 12.

An exit bid may have been a continue bid in a previous round of the auction, in accordance with clause 8.

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. However if there is no bid by any bidder in the first round for a lot, bidders are not considered to have entered an exit bid at the starting price (see definition of a bid at section 4), and so there will be no final high bid in that case (and, therefore, there is no winning bidder).

#### **Clause 12 Tiebreaker for a lot**

This clause applies in relation to a lot if, during the final round for bids on a lot, no continue bid was made on the lot, two or more exit bids were made on the lot, and of those exit bids:

- (a) two or more of those exit bids were equal (**the tied exit bids**); and
- (b) the tied exit bids were greater than each other exit bid made in the final round.

Where this clause applies, the winning bidder for the lot will be selected from the bidders who made the tied exit bids by pseudorandom selection, which must be conducted before the next round of the auction (if any).

For the purposes of paragraph 11(5)(d) of this Schedule, the final high bid for the lot is the amount of the last bid made by the winning bidder. This will be the amount of the tied exit bids.

### **Part 4—Bringing the auction to a close**

#### **Clause 13 Close of the auction**

The auction will close immediately after either:

- (a) if clause 12 applies in relation to a lot in the last of the third product lots – the pseudorandom selection mentioned in subclause 12(2) occurs; or
- (b) in any other case – the final round of the auction.

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**

### **Part 1—1800 MHz band and 1800 MHz lots**

#### **Clause 1            Interpretation**

This section defines the geographic area of the 1800 MHz lots by reference to their definition in the 1800 MHz marketing plan.

#### **Clause 2            The 1800 MHz band**

This section defines the **1800 MHz band** for the purposes of the 1800 MHz allocation limits. The band is the following frequency ranges in regional Australia (as defined in the 1800 MHz re-allocation declaration):

- (a) 1725 MHz–1785 MHz;
- (b) 1820 MHz–1880 MHz.

#### **Clause 3            The 1800 MHz lots**

This section defines the 1800 MHz lots. There are five lots; each lot represents a particular range of frequencies in each part of the 1800 MHz band, in a particular geographic area. The lots are ‘paired’, so that one lot covers two parts of the spectrum. Each lot is given a unique name and lot number.

### **Part 2—2 GHz lots**

#### **Clause 4            Interpretation**

This section defines the geographic area of the 2 GHz lots by reference to their definition in the 2 GHz marketing plan.

#### **Clause 5            The 2 GHz lots**

This section defines the 2 GHz lots. There are nine lots; each lot represents a particular range of frequencies in each part of the 2 GHz band, in a particular geographic area. The lots are ‘paired’, so that one lot covers two parts of the spectrum. Each lot is given a unique name and lot number.

### **Part 3—2.3 GHz lots**

#### **Clause 6            Interpretation**

This section defines the geographic area of the 2.3 GHz lots by reference to their definition in the 2.3 GHz marketing plan.

**Clause 7      The 2.3 GHz lots**

This section defines the 2.3 GHz lots. There are eleven lots; each lot represents a particular range of frequencies in the 2.3 GHz band, in a particular geographic area. Each lot is given a unique name and lot number.

**Part 4—3.4 GHz lots**

**Clause 8      Interpretation**

This section defines the geographic area of the 3.4 GHz lots by reference to their definition in the 3.4 GHz marketing plan.

**Clause 9      The 3.4 GHz lots**

This section defines the 3.4 GHz lots. There are fourteen lots; each lot represents a particular range of frequencies in the 3.4 GHz band, in a particular geographic area. Each lot is given a unique name and lot number.

## **SCHEDULE 3            ALLOCATION LIMITS**

### **Clause 1            The 1800 MHz allocation limits**

Allocation limits for the 1800 MHz band are defined in section 10 of the Determination by reference to Schedule 3. This Schedule sets out that the allocation limits are 25 MHz of spectrum in each of the frequency ranges 1725 MHz to 1785 MHz and 1820 MHz to 1880 MHz, in regional Australia. These are the limits set out in the 1800 MHz spectrum limits direction.

There are no allocation limits for the 2 GHz band, the 2.3 GHz band or the 3.4 GHz band.



## **SCHEDULE 4 POST-AUCTION ALLOCATION**

### **Part 1—Preliminary**

#### **Clause 1 Application of Schedule**

This clause applies in relation to a lot to which section 76 (Unallocated spectrum) of the Determination applies. These are lots that were not included in spectrum licences issued as a result of the auction or under Part 5. For example, if there was a winning bidder who failed to pay the balance of the winning price for a spectrum licence, section 76 applies to all the lots in that licence (section 73).

However, if the ACMA conducts an auction under Part 6 of this Determination, the ACMA cannot act under this Schedule before the end of the auction process.

#### **Clause 2 Interpretation**

This clause defines a number of key terms used in the post-auction allocation process. It also outlines the calculation of the post-auction pre-determined price. For a licence issued in accordance with Schedule 4 that is to commence on 1 February 2018, the post-auction pre-determined price for the licence is the sum of the starting prices for the lots included in the licence. For a licence that is to commence on a later date, the formula in subclause (4) is applied to the sum of the starting prices for the lots included in the licence to obtain the post-auction pre-determined price. The formula applies a discount to the starting prices for the lots included in the licence, based on the shorter duration of the licence that will result from having a later commencement date.

### **Part 2—Post-auction applications**

#### **Clause 3 Publication of advertisement**

This clause provides that the ACMA may publish a notice on its website ([www.acma.gov.au](http://www.acma.gov.au)) inviting interested persons to apply to the ACMA to be allocated a spectrum licence on request after the auction. The notice will specify the spectrum that is available to be allocated, and will show the opening times for receipt of applications and the method for calculating the post-auction pre-determined price. This clause also provides that if there are any changes to information in the notice, the ACMA must publish another notice on its website with details of the change. Subclause (8) provides that the ACMA may also publish the information provided in the advertisement, and other information about the auction, by other means.

The ACMA is not obliged to publish a notice under clause 3. A notice may invite applications for only some of the spectrum to which the Schedule applies (for example, only the lots in one band may be the subject of a particular notice). The ACMA may publish more than one notice, so that, over time, some or all the spectrum to which the Schedule applies is made available.

The ACMA may revoke a notice, but any application made before the notice is revoked must be considered in accordance with Schedule 4.

#### **Clause 4 Post-auction applicant information package**

The post-auction applicant information package (**PAAIP**) is intended to give prospective participants the key information they need to decide whether to apply for a licence in the post-auction allocation

process. This clause specifies the information that the PAAIP will contain. The PAAIP will include the Determination and other instruments relevant to the spectrum included in the notice published under clause 3 (for example, if the notice relates to lots in the 2.3 GHz band, the 2.3 GHz designation notice and 2.3 GHz marketing plan will be included).

The PAAIP will provide information needed for a person to apply for a licence and be allocated and issued spectrum licences. The form required for an applicant to apply will be provided. To assist interested parties to better understand the contents of the PAAIP, this package will include a concise summary of how the post-auction allocation will take place as well as other relevant information.

The ACMA must publish the PAAIP on its website. A notice will also be published giving details of any subsequent changes made to the PAAIP after initial release. The post-auction application form must require a post-auction applicant to state the date upon which the spectrum licence which is the subject of the form would come into force, and the post-auction applicant's estimate of the post-auction pre-determined price for the licence. The post-auction application form must also request that a post-auction applicant state its associates, if the applicant is applying for a 1800 MHz lot.

### **Clause 5 Making an post-auction application**

To apply for a licence under Schedule 4, a person must comply with clause 5. This clause sets out the required documents and forms that a person must submit. For a post-auction application to be considered valid, applicants must do the following:

- (a) lodge a completed post-auction application form and a signed deed of acknowledgement;
- (b) if the ACMA determines a post-auction application fee – pay the fee; and
- (c) if the post-auction applicant is applying for a spectrum licence for one or more 1800 MHz lots – lodge a statutory declaration stating whether the post-auction applicant is affiliated with an existing 1800 MHz licensee .

Instructions on how to lodge documents are explained in the PAAIP (see also clause 14). A post-auction application is not complete unless and until all documents are lodged and the fee, if any, is paid. A post-auction application cannot be made before the opening date and time specified in the notice published under clause 3.

A post-auction application fee is not refundable.

## **Part 3—Allocating and issuing spectrum licences**

### **Clause 6 Order of applications**

This clause outlines the issues relating to the order of post-auction spectrum licence applications. The ACMA must not consider a post-auction application for a spectrum licence if there has been an earlier post-auction application for the licence which has not been finally dealt with under Part 3. Once all such earlier applications are dealt with, the ACMA may consider the post-auction application, meaning that applications are considered on a first-in-time basis.

### **Clause 7 Post-auction application and the allocation limits**

This clause provides that the ACMA cannot allocate a spectrum licence to a post-auction applicant whose application for a licence would breach the 1800 MHz allocation limits. This occurs even if some of the lots to be included in the licence would not breach the 1800 MHz allocation limits. The ACMA must notify the applicant of any such decision not to allocate a spectrum licence for the any of the lots. The applicant may make another post-auction application.

### **Clause 8 Earlier allocation of spectrum licence**

This clause specifies that, in relation to a post-auction application, the ACMA must not allocate a licence for one or more lots to a post auction applicant where the ACMA has already allocated a licence for those lots (**earlier licence**).

If only some of the lots included in the post-auction application have been included in an earlier licence, the ACMA may continue acting under Part 3 in relation to the remaining lots, and offer the post-auction applicant a licence for those remaining lots,

If all of the lots included in the post-auction application have been included in an earlier licence, the ACMA must not issue a licence as a consequence of the application and must notify the post-auction applicant that the ACMA cannot allocate or issue a spectrum licence as a result of that application.

### **Clause 9 Offer of spectrum licence**

This clause relates to the offer of a spectrum licence where, after receiving a post-auction application for a lot, the ACMA is not prohibited from issuing a licence for the lot by clause 7 or 8. The ACMA must notify the applicant of the post-auction pre-determined price (along with a draft of the spectrum licence) and a date (a minimum of 20 working days from the date of the notice) by which payment must be received for the licence to be allocated to the post-auction applicant.

### **Clause 10 Allocation of licence**

This clause specifies that a licence is allocated to a post-auction applicant if that applicant pays the post-auction pre-determined price for a spectrum licence by the date included in a notice under clause 9.

### **Clause 11 Issue of licence**

This clause outlines the details of the issue of a licence under a post-auction application process. The ACMA must issue the licence to a post-auction applicant if it is allocated under clause 10. The date the licence comes into force must be the latest of:

- (a) the date specified in the post-auction applicant's completed post-auction application form;  
or
- (b) the date the licence is issued; or
- (c) 1 February 2018.

## **Clause 12 Default**

This clause outlines the consequences if a post-auction applicant does not pay the post-auction pre-determined price for a spectrum licence by the date included in a notice under clause 9. If the applicant does not pay, the spectrum licence is not allocated to the applicant, the allocation of spectrum licences under the Determination to any other person is not affected, and the ACMA may publish another application notice in relation to a lot that would have been included in the spectrum licence.

## **Clause 13 Publication of allocation**

Once the allocation of a licence is completed under Schedule 4, the ACMA must announce or publish the name of the successful post-auction applicant, the spectrum licence allocated to the post-auction applicant and the post-auction pre-determined price for the spectrum licence.

## **Part 4—Giving documents under this Schedule**

### **Clause 14 Giving documents to ACMA**

This section outlines the process for giving documents to the ACMA under Schedule 4. A document may be given to the ACMA under this Schedule by emailing the document to the email address specified in the post-auction applicant information package. If a document is emailed, the document must be included as an attachment; and must be in PDF format (if it is a deed) or in Word, RTF or PDF format (if it is not a deed). The ACMA, however, can approve the delivery of documents in other formats than those listed.