



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

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

Dated: 25 September 2017

Richard Bean
[signed]
Member

Brendan Byrne
[signed]
~~Member~~/General Manager

Australian Communications and Media Authority

Part 1—Preliminary

1 Name

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

2 Commencement

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

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

3 Authority

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

4 Interpretation

(1) In this instrument:

1800 MHz allocation limits: see section 10.

1800 MHz allocation limits direction means the *Radiocommunications (Spectrum Licence Limits – Regional 1800 MHz Band) Direction 2015*.

1800 MHz band: see clause 2 of Schedule 2.

1800 MHz lot: see clause 3 of Schedule 2.

1800 MHz marketing plan means the *Radiocommunications Spectrum Marketing Plan (1800 MHz unallocated lots band) 2017*.

1800 MHz re-allocation declaration means the *Radiocommunications (Spectrum Re-allocation – Regional 1800 MHz Band) Declaration 2015*.

2 GHz and 3.4 GHz designation notice means the *Radiocommunications (Spectrum Designation – 2 GHz and 3.4 GHz Bands) Notice 2017*.

2 GHz lot: see clause 5 of Schedule 2.

2 GHz marketing plan means the *Radiocommunications Spectrum Marketing Plan (2 GHz unallocated lots band) 2017*.

2.3 GHz designation notice means the *Radiocommunications (Spectrum Designation) Notice No. 1 of 2000 (14/01/2000)*.

Note: The Federal Register of Legislation number for the 2.3 GHz designation notice is F2004B00494.

2.3 GHz lot: see clause 7 of Schedule 2.

2.3 GHz marketing plan means the *Radiocommunications Spectrum Marketing Plan (2.3 GHz unallocated lots band) 2017*.

3.4 GHz lot: see clause 9 of Schedule 2.

3.4 GHz marketing plan means the *Radiocommunications Spectrum Marketing Plan (3.4 GHz unallocated lots band) 2017*.

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

ACMA staff has the meaning given by section 3 of the *Australian Communications and Media Authority Act 2005*.

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

Act means the *Radiocommunications Act 1992*.

affiliated: see subsections 12(1) and 13(1).

allocation process means the procedures to be applied in allocating spectrum licences, as determined in this instrument, other than the procedures set out in Schedule 4.

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

applicant information package means a package containing the information, forms and other documents set out in subsection 28(1).

application deadline: see paragraph 27(1)(f).

application fee means the amount set under section 24.

application form means the form approved by the ACMA under paragraph 28(1)(l).

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

associate: see subsection 11(1).

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

auction manager means the person appointed under section 23.

auction period means the period commencing on the application deadline and ending at the close of the auction under clause 13 of Schedule 1.

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

balance of the pre-determined price: see subsection 39(2).

balance of the winning price: see subsection 69(2).

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

bid increment percentage: see section 34.

bidder means a person registered by the ACMA as a bidder under section 51.

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

confidential information: see section 16.

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

deed of acknowledgement means a deed in the form approved under paragraph 28(1)(q) that has been completed and executed by an applicant in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

Note: Strict compliance with the form is required.

deed of confidentiality means a deed in the form approved under paragraph 28(1)(r) that has been completed and executed in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

Note: Strict compliance with the form is required.

deed of financial security means a deed in the form approved under paragraph 28(1)(o) that has been completed and executed in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

deposit means a payment made by an applicant under section 29 or in accordance with section 33.

existing 1800 MHz licensee means the licensee of a spectrum licence that authorises the operation of radiocommunications devices in a part or parts of the spectrum in the 1800 MHz band.

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

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

final high bid: see subclause 11(5) of Schedule 1.

Note: Subclause 12(3) of Schedule 1 affects the meaning of **final high bid**.

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

final round for bids on the first product lots: see subclause 11(2) of Schedule 1.

final round for bids on the second product lots: see subclause 11(3) of Schedule 1.

final round of the auction: see subclause 11(4) of Schedule 1.

first product lots: see subsection (3).

lot: see subsection (2).

lot size: see paragraph 3(2)(d) of Schedule 2.

Note: **Lot size** is only relevant to 1800 MHz lots. These lots comprise two parts of the spectrum. For these lots, each part of the spectrum has the same lot size.

pre-determined price: see subsection 39(1).

preference nomination form means the form approved by the ACMA under subsection 28(1)(m).

preferred lots: see subsection 31(1).

Note 1: An applicant's **preferred lots** may be affected by sections 31 to 33.

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

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

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

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

register means the register of bidders maintained by the ACMA under section 50.

related body corporate has the same meaning as in the *Corporations Act 2001*.

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

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

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

second product lot: see subsection (4).

specified group of persons means:

- (a) in relation to an applicant or bidder – the applicant or bidder and all of the applicant's or bidder's associates;
- (b) in relation to an existing 1800 MHz licensee – the licensee and all of the licensee's associates.

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

specified price: see subclauses 5(2) to (8) of Schedule 1.

stage 1 means the rounds of the auction:

- (a) commencing with the first round of the auction; and
- (b) ending with the final round for bids on the first product lots.

Note: If no bidder has nominated a first product lot as one of its preferred lots, no bids may be made in the first round of the auction, and that round constitutes stage 1.

stage 2 means the rounds of the auction:

- (a) commencing with the first round after stage 1 has ended; and
- (b) ending with the final round for bids on the second product lots.

Note: If no bidder has nominated a second product lot as one of its preferred lots, no bids may be made in the first round after stage 1 has ended, and that round constitutes stage 2.

stage 3 means the rounds of the auction:

- (a) commencing with the first round after stage 2 has ended; and
- (b) ending with the final round of the auction.

Note: If no bidder has nominated a third product lot as one of its preferred lots, no bids may be made in the first round after stage 2 has ended, and that round constitutes stage 3.

starting price, for a lot, means the amount set by the ACMA for the lot under section 26.

third product lot: see subsection (5).

winning bid price: see section 68.

winning bidder: see subclause 11(6) of Schedule 1.

Note: Subclause 12(2) of Schedule 1 may affect who is a **winning bidder** for a lot.

winning price: see subsection 69(1).

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

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

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

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

- (2) In this instrument, each of the following is a **lot**:
 - (a) each 1800 MHz lot;
 - (b) each 2 GHz lot;
 - (c) each 2.3 GHz lot;
 - (d) each 3.4 GHz lot.
- (3) In this instrument, each of the following lots is a **first product lot**:
 - (a) Lot 1 (DUBB01);
 - (b) Lot 2 (MACK01);
 - (c) Lot 3 (MARY01);
 - (d) Lot 4 (REGW01);
 - (e) Lot 5 (TASM01);
 - (f) Lot 6 (CBRB01);
 - (g) Lot 7 (DARW01);
 - (h) Lot 8 (HOBA01).
- (4) In this instrument, each of the following is a **second product lot**:
 - (a) Lot 9 (ADEL01);
 - (b) Lot 10 (BRIA01);
 - (c) Lot 11 (CBRA01);
 - (d) Lot 12 (DARW02);
 - (e) Lot 13 (HOBA02);
 - (f) Lot 14 (PERT01).
- (5) In this instrument, each lot, other than a first product lot or a second product lot, is a **third product lot**.

Note: The third product lots are the 2.3 GHz lots and the 3.4 GHz lots.
- (6) In this instrument, the range of numbers that identifies a frequency range includes the higher, but not the lower, number.
- (7) In this instrument, a reference to time is a reference to the legal time in the Australian Capital Territory.

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

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

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

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

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

Note: See section 314A of the Act.

6 Giving documents to ACMA

- (1) A document may be given to the ACMA under this instrument, other than Schedule 4, by:

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

Note 1: Subsection 33(8) has additional requirements for a deed of financial security lodged by email or fax.

Note 2: Schedule 4 contains its own rules for giving a document to the ACMA.

- (2) If a document is emailed:
- (a) the document must be included as an attachment; and
 - (b) the document must be:
 - (i) if the document is a statutory declaration, a statement under subsection 41(3) or section 65, or a deed—in PDF format or another format approved by the auction manager; or
 - (ii) if the document is not a document mentioned in subparagraph (i)—in Word, RTF or PDF format or another format approved by the auction manager.
- (3) If a document is faxed, the document must be accompanied by a cover sheet that states:
- (a) the sender's name, postal address, telephone number and fax number; and
 - (b) the number of pages transmitted, including the cover sheet.
- (4) If the faxed document is a completed application form, a completed preference nomination form, a statutory declaration, a statement under subsection 41(3) or section 65, or a deed, the cover sheet must also state the type of document.

7 Payment of amounts

- (1) An amount paid to the ACMA on behalf of the Commonwealth under this instrument must be paid in Australian currency.
- (2) An amount must be paid by bank cheque or by electronic transfer.

- (3) An electronic transfer must be made into the bank account with the following details:
- (a) Bank—ANZ Bank;
 - (b) Branch—Belconnen;
 - (c) BSB number—012-951;
 - (d) Account number—8379 24272;
 - (e) Account name—ACMA Official Administered Receipts.
- (4) An amount is taken to have been paid by a deadline specified in this instrument if:
- (a) the ACMA receives a bank cheque for the full amount on or before the deadline; or
 - (b) both:
 - (i) the ACMA receives evidence that an electronic transfer of the full amount was made on or before the deadline (such as a transfer receipt); and
 - (ii) the amount is received in the ACMA's bank account specified in subsection (3) no later than 3 working days after the deadline; or
 - (c) the ACMA receives other evidence which satisfies the ACMA that the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.
- (5) An amount payable under this instrument is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the amount payable.
- Note: The effect of this subsection is that an applicant or bidder must add the value of any bank charge or government duty to the amount of a payment.
- (6) If an amount payable under this instrument is not an amount of whole dollars, the amount is rounded up to the next dollar.

8 Statutory declaration for body corporate

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

Part 2—Limits on allocation of spectrum

9 Simplified outline of this Part

This Part deals with the definition and application of the **1800 MHz allocation limits** that apply to the allocation of spectrum licences under this instrument.

The Minister has given the ACMA the 1800 MHz allocation limits direction under subsection 60(10) of the Act, which requires the ACMA to determine procedures that impose limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may in total be used by members of a specified group of persons in the 1800 MHz band, namely, any person and that person's associates.

This Part also sets out when two people are **affiliated** for the purposes of this instrument. Generally, if two people are affiliated, this may affect their ability to be issued spectrum licences for 1800 MHz lots.

This Part also sets out when a person is **affiliated** with the holder of a spectrum licence in the 1800 MHz band. In determining and applying procedures imposing the allocation limits, the ACMA must take into account spectrum licences to be allocated under this instrument and spectrum licences already issued to a person. Generally, if a person is affiliated with the holder of a spectrum licence in the 1800 MHz band, this may affect the person's ability to apply for or be issued spectrum licences for 1800 MHz lots.

No allocation limits apply in relation to the 2 GHz lots, the 2.3 GHz lots or the 3.4 GHz lots.

10 Meaning of **1800 MHz allocation limits**

In this instrument, a reference to the **1800 MHz allocation limits** is a reference to the limits that, under the 1800 MHz allocation limits direction:

- (a) must be imposed by the procedures determined in this instrument for the allocation of spectrum licences in the 1800 MHz band; and
- (b) ensure that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, no person or specified group of persons for the 1800 MHz band may use more than the spectrum specified in Schedule 3 in the 1800 MHz band.

Note: The Minister has given a direction to the ACMA, under subsection 60(10) of the Act, that limits be imposed on the aggregate of the parts of the spectrum in the 1800 MHz band that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may be used by a person or specified group of persons for the 1800 MHz band. See the 1800 MHz allocation limits direction.

11 Meaning of **associate**

- (1) In this instrument, **associate**, in relation to a person, means:
 - (a) if the person is a body corporate:
 - (i) a director or secretary of the body; or
 - (ii) a related body corporate; or
 - (iii) a director or secretary of a related body corporate; or

- (iv) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or
- (b) if the person is an individual:
 - (i) the individual's spouse; or
 - (ii) the individual's de facto partner within the meaning given by the *Acts Interpretation Act 1901*; or
 - (iii) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
 - (iv) a body corporate of which the individual is a director or secretary; or
 - (v) a body corporate that is related to a body corporate of which the individual is a director or secretary; or
- (c) in all cases – any other person (other than the Commonwealth when represented by the ACMA) who has a relevant agreement with the person that:
 - (i) is for the use by a party to the agreement of spectrum licensed to either of those parties under a spectrum licence for a part of the spectrum referred to in the 1800 MHz re-allocation declaration; or
 - (ii) relates to the acquisition of a spectrum licence for a part of the spectrum referred to in the 1800 MHz re-allocation declaration.

Note: The spectrum referred to in the 1800 MHz re-allocation declaration is the 1800 MHz band.

- (2) For paragraph (1)(c), a **relevant agreement** means an agreement, arrangement or understanding:
 - (a) whether formal or informal or partly formal and partly informal; and
 - (b) whether written or oral or partly written and partly oral; and
 - (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;other than a roaming services agreement or an agreement between carriers provided for by or under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.

12 Affiliation between applicants or bidders

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

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

- (2) If 2 applicants or bidders are affiliated, they are taken to be in a single specified group of persons for the purpose of the 1800 MHz allocation limits.

Note: Section 12 is recursive, so that more than 2 applicants or bidders may be taken to be in a single specified group of persons for the purposes of the 1800 MHz allocation limits. See also the definition of **specified group of persons** in the 1800 MHz allocation limits direction.

13 Affiliation between applicant or bidder and existing licensee

- (1) An applicant or bidder is **affiliated** with an existing 1800 MHz licensee if:
 - (a) the applicant or bidder and the existing 1800 MHz licensee are associates of each other; or

- (b) the specified group of persons in relation to the applicant or bidder has at least one member in common with the specified group of persons in relation to the existing 1800 MHz licensee.

Note 1: Paragraph 13(1)(b) means that an applicant or bidder is affiliated with an existing 1800 MHz band licensee if the applicant or bidder and the licensee have an associate in common.

Note 2: An existing 1800 MHz licensee may also be an applicant or bidder.

- (2) If an applicant or bidder is affiliated with an existing 1800 MHz licensee, the applicant or bidder and the licensee are taken to be in a single specified group of persons for the purpose of the 1800 MHz allocation limits.

Note: Section 13 is recursive, so that one or more existing 1800 MHz licensees, and one or more of the applicants or bidders, may be taken to be in a single specified group of persons for the purposes of the 1800 MHz limits. See also the definition of *specified group of persons* in the 1800 MHz allocation limits direction.

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

- (1) When considering under this instrument:
 - (a) whether 2 or more applicants or bidders are affiliated; or
 - (b) whether one or more applicants or bidders are affiliated with one or more existing 1800 MHz licensees;

the ACMA must have regard to:

- (c) application forms given under paragraph 29(1)(a); and
- (d) statutory declarations and statements made under this instrument.

Note: The ACMA will only consider whether two people are affiliated in relation to the auction process if at least one of them has nominated a 1800 MHz lot as one of its preferred lots.

- (2) The ACMA may have regard to any other information that it considers relevant.

Part 3—Confidentiality

15 Simplified outline of this Part

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

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

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

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

16 Meaning of *confidential information*

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

- (a) documents the applicant or bidder has given to the ACMA for the purpose of the allocation process; and
- (b) information provided to the bidder under subsection 51(2) for the purpose of participating in the auction; and
- (c) a bid made by the bidder in the auction; and
- (d) a bid proposed to be made by the applicant or bidder or a bid under consideration by the applicant or bidder; and
- (e) the applicant's or bidder's bidding strategy; and
- (f) the amount the applicant or bidder is willing to pay for:
 - (i) a lot; or
 - (ii) a combination of lots; and
- (g) information that, if disclosed, could be reasonably expected to affect or be capable of affecting:
 - (i) bids made or proposed to be made by another applicant or bidder; or
 - (ii) another applicant or bidder's bidding strategy; and
- (h) information that, if disclosed, could be reasonably expected to affect or be capable of affecting the outcome of the allocation process.

17 Obligation not to disclose confidential information

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

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

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

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

18 Duration of confidentiality obligations

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

- (a) for confidential information that relates to a spectrum licence allocated or to be allocated in accordance with Part 5 of this instrument – the applicant is notified under subsection 44(1) that the ACMA has received the applicant's acceptance of an offer of a spectrum licence; or
- (b) the bidder is notified under subsection 64(1) that the bidder is not a winning bidder; or
- (c) the applicant, as a withdrawn applicant, is notified under subsection 64(3) that the applicant's confidentiality obligations are at an end; or
- (d) the bidder, as a winning bidder, makes a statement under section 65.

19 Reporting breach of confidentiality

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

20 Notice of breach of confidentiality

- (1) If the ACMA has reason to believe that an applicant or bidder, or a related person of the applicant or bidder, may have disclosed confidential information in breach of section 17 or received confidential information as a result of a breach of section 17, the ACMA must:
 - (a) tell the applicant or bidder, giving details of the matter; and
 - (b) ask the applicant or bidder to make submissions about the matter; and
 - (c) state a deadline for the receipt of submissions that is no more than 5 working days after the date of the request.
- (2) If the ACMA forms the belief before:
 - (a) for confidential information that relates to a spectrum licence allocated or to be allocated in accordance with Part 5 of this instrument – notifying the applicant

under subsection 44(1) that the ACMA has received the applicant's acceptance of an offer of a spectrum licence; or

(b) in any other case – the end of the auction period;

the ACMA is not required to tell the applicant or bidder before that time, but must tell the applicant or bidder as soon as practicable after that time.

21 Deed of confidentiality required from related persons

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

Note: A deed of confidentiality form must be provided by the ACMA as part of the applicant information package on the ACMA's website at www.acma.gov.au – see section 27 and paragraph 28(1)(r).

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

Division 1—Simplified outline

22 Simplified outline of this Part

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

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

Persons wishing to participate in the allocation process must complete forms, deeds and declarations, and give them to the ACMA by the relevant deadlines. Some of the forms and declarations will contain information about the associates of the person. The ACMA will use this information to work out whether any applicants are affiliated with each other, or with the holder of a spectrum licence, for the purpose of the 1800 MHz allocation limits. If there are such affiliations, this may have consequences for the applicant's ability to participate in the allocation process in relation to the 1800 MHz lots.

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

Division 2—Preliminary

23 Auction manager

The ACMA must, in writing, appoint:

- (a) a member, within the meaning of the *Australian Communications and Media Authority Act 2005*; or
- (b) a member of the ACMA staff; or
- (c) a person whose services are made available for the purposes of the ACMA under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*;

to manage the auction.

24 Setting application fee

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

25 Application fee not refundable

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

26 Starting prices

The ACMA must set a starting price for each lot.

Division 3—Advertising the auction

27 Advertising of auction by ACMA

- (1) The ACMA must publish on its website a notice that:
 - (a) describes the parts of the spectrum to be auctioned; and
 - (b) gives a brief description of the way the auction will be conducted; and
 - (c) states that the auction will be conducted in accordance with this instrument; and
 - (d) states that the ACMA may conclude that it can allocate a spectrum licence or licences for lots at a pre-determined price without having to conduct an auction; and
 - (e) invites persons to apply to the ACMA to take part in the auction; and
 - (f) states the date and time (the *application deadline*) before which:
 - (i) completed application forms must be received by the ACMA; and
 - (ii) the application fee must be paid to the ACMA on behalf of the Commonwealth; and
 - (iii) completed preference nomination forms must be received by the ACMA; and
 - (iv) deposits must be paid to the ACMA on behalf of the Commonwealth or deeds of financial security must be given to the ACMA on behalf of the Commonwealth; and
 - (g) states that applications may not be withdrawn after the application deadline; and
 - (h) states that the applicant information package can be obtained from the ACMA's website at the electronic address given in the notice.
- (2) If a matter mentioned in the notice changes, the ACMA must publish another notice giving details of the change on its website.
- (3) The ACMA may publish the information required by subsections (1) and (2) by additional methods, and may publish other information about the auction by any method.

28 Applicant information package

- (1) The applicant information package must contain the following documents and information:
 - (a) the 1800 MHz re-allocation declaration;
 - (b) the 2 GHz and 3.4 GHz designation notice;
 - (c) the 2.3 GHz designation notice;
 - (d) the 1800 MHz marketing plan;
 - (e) the 2 GHz marketing plan;
 - (f) the 2.3 GHz marketing plan;
 - (g) the 3.4 GHz marketing plan;

- (h) this instrument;
- (i) the 1800 MHz allocation limits direction;
- (j) a guide to the auction;
- (k) a statement that the ACMA may offer to allocate spectrum licences for lots for a pre-determined price, including under Schedule 4;
- (l) an application form approved by the ACMA, with instructions for completing and giving the form to the ACMA;
- (m) a preference nomination form approved by the ACMA, with instructions for completing and giving the form to the ACMA;
- (n) the starting price for each lot;
- (o) a deed of financial security form approved by the ACMA;
- (p) information about providing a deed of financial security as an alternative to a deposit;
- (q) a deed of acknowledgment form approved by the ACMA, that includes a statement to the effect that an applicant understands and agrees to be bound by the provisions of this instrument;
- (r) a deed of confidentiality form approved by the ACMA, that includes a statement that an applicant (or related person of an applicant) agrees not to disclose confidential information before section 17 ceases to apply to the relevant applicant or the related person;
- (s) statutory declaration forms for the purposes of this instrument;
- (t) the amount of the application fee for the auction;
- (u) the application deadline;
- (v) the physical address for giving documents to the ACMA;
- (w) the email address for giving documents to the ACMA;
- (x) the fax number for giving documents to the ACMA.

Note: An application form approved for paragraph (l) may require an applicant that has nominated a 1800 MHz lot as one of its preferred lots to provide details about the associates of the applicant.

- (2) The applicant information package may also contain other information about the allocation process.
- (3) The applicant information package must be published on the ACMA's website.
- (4) If the ACMA makes any change to the contents of the applicant information package after it is published, the ACMA must publish a notice giving details of the change on its website.

Division 4—Application to participate in auction

29 Making an application

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

- (i) paying a deposit of an amount to the ACMA on behalf of the Commonwealth; or
- (ii) giving the ACMA on behalf of the Commonwealth a deed of financial security, for an amount; or
- (iii) paying a deposit of part of an amount and giving a deed of financial security for the remainder; and

(g) if:

- (i) the applicant has nominated one or more 1800 MHz lots in its preference nomination form; and
- (ii) the applicant is not an existing 1800 MHz licensee; giving the ACMA a statutory declaration stating whether the applicant is affiliated with an existing 1800 MHz licensee;

before the application deadline.

Note 1: For information on how the application fee must be paid, see section 7.

Note 2: For information on how a deposit is paid, see section 7. For information on how a deed of financial security is given, see section 6 and subsection 33(8).

- (2) An applicant may give the ACMA an updated document for paragraphs (1)(a) to (d), or subparagraphs (1)(f)(ii) or (iii), at any time until the application deadline, but not after the deadline.
- (3) An applicant may give the ACMA an updated document for paragraph (1)(g) at any time.
- (4) For paragraph (1)(f), **amount**, in relation to a person, has the meaning given by subsection 33(1).

30 Applicants to notify ACMA if application information incorrect

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

31 Preferred lots

- (1) Subject to this section and sections 32 and 33, an applicant's **preferred lots** are the lots nominated as the applicant's preferred lots in the completed preference nomination form.
- (2) Subject to this section and sections 32 and 33, an applicant may nominate one or more lots as its preferred lots.
- (3) An existing 1800 MHz licensee must not nominate a lot, or a combination of lots, if the aggregate of:
 - (a) the lot size of that lot, or of that combination of lots; and
 - (b) the part of the spectrum that the licensee, or the specified group of persons for the 1800 MHz band that includes the licensee, may use in the 1800 MHz band; exceeds the 1800 MHz allocation limits.
- (4) If an applicant:
 - (a) must not nominate a lot, or a combination of lots, under subsection (3); and
 - (b) purports to nominate that lot, or that combination of lots;the applicant is taken not to have nominated the lot, or the combination of lots, and the ACMA must tell an applicant in writing that it is taken not to have nominated the lot or lots.

32 Procedure if applicant affiliated with existing 1800 MHz licensee

- (1) If:
 - (a) in a statutory declaration given under section 29 an applicant (*the affiliated applicant*) has stated that it is affiliated with an existing 1800 MHz licensee; and
 - (b) the affiliated applicant has nominated, in a preference nomination form, one or more 1800 MHz lots (*the nominated lots*) as its preferred lots; and
 - (c) the aggregate of:
 - (i) the lot size of one or more of the nominated lots; and
 - (ii) the part or parts of the spectrum that the existing 1800 MHz licensee, or the specified group of persons that includes the affiliated applicant and the existing 1800 MHz licensee, may use in the 1800 MHz band; exceeds the 1800 MHz allocation limits;the ACMA must, in writing, notify the affiliated applicant that:
 - (d) the applicant is affiliated with the existing 1800 MHz licensee; and
 - (e) if the affiliated applicant were to be the winning bidder for one or more 1800 MHz lots, the 1800 MHz allocation limits would be exceeded; and
 - (f) 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.
- Note: This section applies whether or not the existing 1800 MHz licensee is an applicant.
- (2) Within 5 working days of the ACMA notifying the affiliated applicant under subsection (1), the applicant must give the ACMA a new preference nomination form (*revised preference nomination form*).
- (3) If an affiliated applicant does not comply with subsection (2), the affiliated applicant is taken not to have nominated any 1800 MHz lots as its preferred lots.
- (4) If:
 - (a) the affiliated applicant complies with subsection (2); and
 - (b) the aggregate of:
 - (i) the lot size of one or more of the lots nominated by the affiliated applicant in the revised preference nomination form; and
 - (ii) the part or parts of the spectrum that the existing 1800 MHz licensee, or the specified group of persons that includes the affiliated applicant and the existing 1800 MHz licensee, may use in the 1800 MHz band; exceeds the 1800 MHz allocation limits;the affiliated applicant is taken not to have nominated any 1800 MHz lots as its preferred lots.
- (5) The ACMA must tell an applicant in writing if, under subsection (3) or (4), it is taken not to have nominated any 1800 MHz lots as its preferred lots.
- (6) Subject to subsections (3) and (4), if an affiliated applicant complies with subsection (2), the applicant's *preferred lots* are the lots nominated as the applicant's preferred lots in the revised preference nomination form.

Note 1: An applicant's ability to nominate preferred lots in the auction may be restricted as a result of the application of the 1800 MHz allocation limits to the lots to be auctioned under this instrument and the spectrum licences held by existing 1800 MHz licensees.

Note 2: An applicant's preferred lots may also be affected by section 33.

33 Amount of deposit or deed of financial security required

- (1) For the purposes of paragraph 29(1)(f), the **amount** required, in relation to an applicant, is 10 percent of the sum of the starting prices of each of the applicant's preferred lots nominated in the preference nomination form.

Note: If an applicant gives the ACMA a revised preference nomination form under section 32, the amount required does not increase or decrease proportionally to any change in the sum of the starting prices of the applicant's preferred lots.
- (2) If an applicant pays a deposit or gives a deed of financial security (or both) for an amount less than the amount under subsection (1), the ACMA must, in writing, notify the applicant that:
 - (a) the applicant has paid a deposit or given a deed of financial security (or both), whichever the case may be, for less than the amount under subsection (1); and
 - (b) the applicant must, before the application deadline or no later than 3 working days after the date of the notice (whichever is the later), pay a deposit or give a deed of financial security (or both) for the remainder of the amount under subsection (1).
- (3) If the applicant does not comply with the notice given under subsection (2), the applicant's preferred lots are to be worked out by the ACMA removing from the applicant's preference nomination form the lot or lots with the lowest starting price until the remaining preferred lots result in an amount under subsection (1) that is equal to, or less than, the deposit paid or the deed of financial security given (or both).

Note 1: The removal of lots is not specific or confined to a single band. If an applicant has nominated lots in multiple bands, the lot with the lowest starting price will be the first removed under this subsection, regardless of the band the lot is in.

Note 2: See subsection (13) for dealing with lots with the same starting price.
- (4) If, after the ACMA removes lots from an applicant's preference nomination form in accordance with subsection (3), no lots remain, the applicant is taken to have withdrawn its application.
- (5) The ACMA must tell an applicant in writing if:
 - (a) the applicant has had its preferred lots worked out in accordance with subsection (3); or
 - (b) the applicant is taken to have withdrawn its application under subsection (4).
- (6) A deed of financial security must be executed by an Australian-owned authorised deposit-taking institution (as defined in the *Banking Act 1959*) which is a bank.
- (7) If a deed of financial security is executed by a person acting under a power of attorney for a body corporate, the applicant must give the ACMA a copy of the power of attorney with the deed.
- (8) If a deed of financial security is given to the ACMA by email or fax before the application deadline, the original deed must be received by the ACMA no later than 3 working days after the application deadline (or, if the ACMA agrees to a later time, the agreed time) for the deed to be taken to have been given to the ACMA.
- (9) An applicant is taken to have withdrawn its application if the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in subsection (6).
- (10) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (9).
- (11) If:

- (a) the ACMA removes a lot from an applicant's preference nomination form in accordance with subsection (3); and
 - (b) the applicant has given the ACMA a revised preference nomination form under section 32; and
 - (c) the lot is included in the revised preference nomination form; and
 - (d) the lots nominated in the revised preference nomination form are the applicant's preferred lots;
- the lot is taken to be removed from the applicant's revised preference nomination form.
- (12) The ACMA must tell an applicant in writing if a lot is taken to be removed from a revised preference nomination form under subsection (11).
 - (13) For the purposes of subsection (3), if:
 - (a) two or more lots in a preference nomination form have the same starting price;
 - (b) no other lot remaining in the preference nomination form has a lower starting price;the ACMA may select any of those lots to be the lot with the lowest starting price.

Division 5—Other matters

34 Bid increment percentage

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

Note: The auction manager may vary the percentage set under section 34 – see clause 6 of Schedule 1.

35 Withdrawal of application

- (1) An applicant may withdraw its application before the application deadline, by giving the ACMA notice in writing.
- (2) If an applicant who withdraws its application under subsection (1), or who is taken to have withdrawn its application under another section of this instrument, has paid a deposit under section 29 or in accordance with section 33, the ACMA must refund the deposit in accordance with subsection 64(4).
- (3) Subsection (2) is subject to sections 81 and 84.
- (4) An applicant may not withdraw its application after the application deadline.
- (5) An applicant must not be re-admitted to the allocation process after withdrawing its application.

Part 5—Allocation for a pre-determined price

36 Simplified outline of this Part

This Part deals with the procedures to be undertaken if, for a lot, there is only one applicant that has nominated the lot as one of its preferred lots.

In these circumstances, the ACMA will offer to allocate a spectrum licence for the lot to that applicant. An applicant who accepts the offer must pay the balance of the pre-determined price for the lot (the starting price, less any deposit paid) before the applicant is entitled to be issued the licence.

37 Allocation for a pre-determined price without an auction

- (1) If, before the auction manager sets the start date and time for the first and second rounds of the auction under section 56, the ACMA is satisfied that, for a lot, there is only one applicant that has nominated the lot as one of its preferred lots, the ACMA may offer to allocate the spectrum licence for the lot for a pre-determined price, as set out in this Part.
- (2) An offer of a spectrum licence is conditional on payment of the pre-determined price.

Note: See sections 40, 41 and 44.

38 ACMA must have regard to applicants' requirements

In deciding under subsection 37(1) whether it is satisfied that, for a lot, there is only one applicant that has nominated the lot as one of its preferred lots, and in identifying lots for the purposes of that subsection, the ACMA must only have regard to:

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

Note 1: The 1800 MHz allocation limits may affect the lots an applicant may have included in a licence.

Note 2: The amount of the deposit paid or deed of financial security given (or both) may affect an applicant's preferred lots.

39 The pre-determined price

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

Note: The starting price is set by the ACMA under section 26.

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

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

- (1) This section applies to each lot other than a 1800 MHz lot.
- (2) If the ACMA is satisfied under subsection 37(1) that, for a lot or a combination of lots, there is only one applicant that has nominated the lot, or each of the lots in the combination, as one of its preferred lots, the ACMA may offer the applicant a spectrum licence for that lots or those lots.

- (3) The ACMA must send the applicant, by registered mail:
 - (a) a draft of the spectrum licence; and
 - (b) a notice stating:
 - (i) that the applicant is offered a spectrum licence for the lots to be included in that licence; and
 - (ii) the amount of the pre-determined price for the licence offered to the applicant; and
 - (iii) the amount of any deposit paid by the applicant and held by the ACMA on behalf of the Commonwealth; and
 - (iv) the balance of the pre-determined price.
- (4) An applicant may accept the ACMA's offer 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.
- (5) If an applicant accepts the offer of the spectrum licence and agrees to pay the balance of the pre-determined price for the spectrum licence in accordance with section 44, the applicant is entitled to be issued the spectrum licence offered to it on payment of the balance of the pre-determined price in accordance with section 44.

Note 1: If an applicant does not accept the offer of a spectrum licence, section 45 applies.

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

41 Offer of spectrum licence – licences for 1800 MHz lots

- (1) This section applies to each 1800 MHz lot.
- (2) If the ACMA is satisfied under subsection 37(1) that, for a lot or a combination of lots, there is only one applicant that has nominated the lot, or each of the lots in the combination, as one of its preferred lots, the ACMA may offer the applicant a spectrum licence for that lots or those lots.
- (3) Before the ACMA offers the applicant a spectrum licence for the lots to be included in that licence, the ACMA must, by written notice given to the applicant:
 - (a) state the identity of each other applicant that has been, or will be, given a notice under this subsection and the associates of those applicants;
 - (b) request the following details about each associate of the applicant:
 - (i) the associate's name;
 - (ii) the associate's ABN, ACN and ARBN, if any;
 - (iii) the associate's address or registered office; and
 - (iv) the nature of the associate's association with the applicant;
 - (c) request that the applicant give the ACMA a statement whether the applicant is an affiliate of:
 - (i) an existing 1800 MHz licensee and, if so, identifying the existing 1800 MHz licensee and giving details of the affiliation; or
 - (ii) another applicant that has been or will be, given a notice under this subsection and, if so, identifying the other applicant and giving details of the affiliation.

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

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

- (4) If:

- (a) an applicant receives a notice under subsection (3); and
- (b) the applicant does not:
 - (i) give the ACMA the details requested in accordance with paragraph (3)(b); or
 - (ii) give the ACMA the statement requested in accordance with paragraph (3)(c); within 5 working days, or such longer time as determined by the ACMA, of receiving the notice;

the ACMA must not offer a spectrum licence to the applicant under this section.

Note: This subsection does not affect the ability of the applicant to participate in an auction.

- (5) If:
 - (a) an applicant receives a notice under subsection (3); and
 - (b) subsection (4) does not apply in relation to the applicant; and
 - (c) the ACMA is satisfied that the aggregate of:
 - (i) the lot size of the lots, to be included in the spectrum licence mentioned in subsection (2); and
 - (ii) the part or parts of the spectrum that the applicant, or the specified group of persons that includes the applicant, may use in the 1800 MHz band; does not exceed the 1800 MHz allocation limits;the ACMA must send the applicant, by registered mail:
 - (d) a draft of the spectrum licence; and
 - (e) a notice stating:
 - (i) that the applicant is offered a spectrum licence for the lots to be included in that licence; and
 - (ii) the amount of the pre-determined price for the licence offered to the applicant; and
 - (iii) the amount of any deposit paid by the applicant and held by the ACMA on behalf of the Commonwealth; and
 - (iv) the balance of the pre-determined price.
- (6) An applicant may accept the ACMA's offer 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.
- (7) If an applicant accepts the offer of the spectrum licence and agrees to pay the balance of the pre-determined price for the spectrum licence in accordance with section 44, the applicant is entitled to be issued the spectrum licence offered to it on payment of the balance of the pre-determined price in accordance with section 44.

Note 1: If an applicant does not accept the offer of a spectrum licence, section 45 applies.

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

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

- (1) This section applies in relation to an applicant if:
 - (a) the applicant receives a notice under subsection 41(3); and
 - (b) subsection 41(4) does not apply in relation to the applicant; and
 - (c) subsection 41(5) does not apply to the applicant.

Note: If an applicant is the only applicant that nominated a combination of 1800 MHz lots as its preferred lots, but issuing a spectrum licence for some or all of those lots to the applicant would exceed the 1800 MHz allocation limits, this section applies to the applicant.

- (2) The ACMA must identify, in relation to the combination of 1800 MHz lots mentioned in subsection 41(2) for the applicant (*the total lots*), each lot where the aggregate of:
 - (a) the lot size of the lot; and
 - (b) the part or parts of the spectrum that the applicant, or the specified group of persons that includes the applicant, may use in the 1800 MHz band;does not exceed the 1800 MHz allocation limits.
- (3) If no total lot can be identified under subsection (2), section 43 applies in relation to the applicant.
- (4) If the ACMA identifies one or more total lots under subsection (2), the ACMA must send the applicant, by registered mail:
 - (a) a draft spectrum licence for those lots; and
 - (b) a notice stating:
 - (i) that the applicant is offered a spectrum licence for the lots to be included in that licence; and
 - (ii) the amount of the pre-determined price for the licence offered to the applicant; and
 - (iii) the amount of any deposit paid by the applicant and held by the ACMA on behalf of the Commonwealth; and
 - (iv) the balance of the pre-determined price.
- (5) An applicant may accept the ACMA's offer 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.
- (6) If an applicant accepts the offer of the spectrum licence and agrees to pay the balance of the pre-determined price for the spectrum licence in accordance with section 44, the applicant is entitled to be issued the spectrum licence offered to it on payment of the balance of the pre-determined price in accordance with section 44.

Note 1: If an applicant does not accept the offer of a spectrum licence, section 45 applies.

Note 2: For the issue of spectrum licences, see section 62 of the Act.
- (7) Section 76 applies to a total lot that is not identified under subsection (2).

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

If this section applies in relation to an applicant:

- (a) the ACMA must notify the applicant, in writing, that if the applicant were to be issued a spectrum licence for any of the 1800 MHz lots it has nominated as its preferred lots, the 1800 MHz allocation limits would be exceeded; and
- (b) the ACMA must not offer the applicant a spectrum licence for one or more 1800 MHz lots under this Part; and
- (c) the allocation of spectrum licences to other applicants under this instrument is not affected.

44 Payment of the balance of the pre-determined price

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

- (2) The balance of the pre-determined price for a spectrum licence is payable no later than 10 working days after the date the applicant is notified under subsection (1).

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

45 Allocation if offer refused

If an applicant does not accept, in accordance with subsection 40(4), subsection 41(6) or subsection 42(5), section 76 applies to a lot that would have been included in the spectrum licence.

46 Default

If an applicant:

- (a) accepts the offer of a spectrum licence and agrees to pay the balance of the pre-determined price for the licence in accordance with subsection 40(4), subsection 41(6) or subsection 42(5); and
- (b) does not pay the balance of the pre-determined price for the licence in accordance with section 44;

then:

- (c) the spectrum licence is not allocated to the applicant; and
- (d) the allocation of spectrum licences under this instrument to other applicants is not affected; and
- (e) section 76 applies to each lot that, but for this section, would have been included in a spectrum licence allocated to the applicant.

Note: See section 86, in relation to the rights of the ACMA and the Commonwealth.

47 Publication of results

The ACMA must announce or publish the following information about the allocation process after the ACMA has notified all relevant applicants under subsection 44(1):

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

Part 6—Auction procedures

Division 1—Simplified outline

48 Simplified outline of this Part

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

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

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

During the auction, bidders for a 1800 MHz lot must report any affiliations with each other, or with an existing 1800 MHz licensee, to the ACMA.

Division 2—Application of this Part

49 Lots to which this Part applies

This Part applies in relation to a lot unless:

- (a) the ACMA is satisfied under subsection 37(1) that there is only one applicant that has nominated the lot as one of its preferred lots; or
- (b) the lot is not a preferred lot for any bidder.

Division 3—Registration of bidders

50 Register of bidders

- (1) The ACMA must maintain a register of bidders in the auction in electronic form.
- (2) For each bidder, the register must contain the following:
 - (a) the bidder's name;
 - (b) the bidder's postal address;
 - (c) the bidder's email address;
 - (d) the bidder's telephone number;
 - (e) the name, position, postal address, email address and telephone number of a contact person for the bidder;
 - (f) the bidder's preferred lots, reduced (if required) as a result of Division 4 of Part 4;
 - (g) the bidder's ACN, ARBN or ABN;
 - (h) if the bidder has nominated one or more 1800 MHz lots as its preferred lots – the names of the bidder's associates and the nature of their association with the bidder.
- (3) The register may also contain any other information that the ACMA considers necessary or convenient for conducting the auction.

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

51 Registration process

- (1) The ACMA must register a person as a bidder in the auction only if:
 - (a) the application deadline has passed; and
 - (b) the person has made a valid application under section 29; and
 - (c) if a deed of financial security is given – the ACMA is satisfied that the person who executed the deed is a person mentioned in subsection 33(6); and
 - (d) the person has not withdrawn, or is not taken to have withdrawn, its application; and
 - (e) in relation to at least one lot the person nominated as one of its preferred lots – the person is not the only applicant to have nominated the lot as one of its preferred lots.
- (2) After the application deadline, the ACMA must, in writing, tell a bidder that the bidder has been registered and may participate in the auction, and give the bidder the following:
 - (a) a copy of the information recorded on the register for the bidder;
 - (b) the ACMA's email address and telephone and fax numbers available for use by bidders;
 - (c) information about accessing and using the auction system;
 - (d) any items required for access;
 - (e) information about how to bid by alternative means if the bidder is unable to submit a bid using the auction system.

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

52 Bidder to notify ACMA if register incorrect

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

53 Preparation for bidding

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

54 Security of auction

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

Division 4—Setting elements of the auction

55 Auction procedures

- (1) The first round of the auction starts on the date and time for that round set by the auction manager under subsection 56(1).
- (2) The rounds of the auction are to be scheduled, and the auction is to be conducted, in accordance with the rules in Schedule 1.

56 First and second rounds

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

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

57 Auction manager’s discretion to accept bids

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

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

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

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

58 Action that auction manager may take in exceptional circumstances

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

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

Division 6—Affiliations during the auction

59 Requirement to report affiliation – 1800 MHz band

- (1) If, at any time during the auction period, a bidder that has nominated one or more 1800 MHz lots as its preferred lots believes that it may be an affiliate of an existing 1800 MHz licensee, the bidder must immediately tell the ACMA in writing the identity of the existing 1800 MHz licensee and give details of the affiliation.
- (2) If, at any time during the auction period, a bidder that has nominated one or more 1800 MHz lots as its preferred lots believes that it may be an affiliate of another bidder that has nominated one or more 1800 MHz lots, the bidder must immediately tell the ACMA in writing the identity of the other bidder and give details of the affiliation.

60 Auction continues despite possible affiliation

- (1) If the ACMA becomes aware during the auction period that a bidder that has nominated one or more 1800 MHz lots may be affiliated with an existing 1800 MHz licensee, the auction is to continue and each of:
 - (a) the bidder; and
 - (b) if the existing 1800 MHz licensee is also a bidder – the licensee;may continue to participate in the auction.
- (2) If the ACMA becomes aware during the auction period that a bidder that has nominated one or more 1800 MHz lots may be affiliated with another bidder that has nominated one or more 1800 MHz lots, the auction is to continue and each of the bidders may continue to participate in the auction.

61 ACMA consideration of affiliation

- (1) If the ACMA has reason to believe that a bidder that has nominated one or more 1800 MHz lots as its preferred lots is affiliated with an existing 1800 MHz licensee during the auction period, and the bidder had not made this known to the ACMA before the commencement of the auction period, the ACMA must notify the bidder in writing and tell the bidder the basis on which the ACMA believes that the bidder is affiliated with the existing 1800 MHz licensee.
- (2) If the ACMA has reason to believe that a bidder that has nominated one or more 1800 MHz lots as its preferred lots is affiliated with another bidder that has nominated one or more 1800 MHz lots during the auction period, and the bidder had not made this known to the ACMA before the commencement of the auction period, the ACMA must notify the bidder in writing and tell the bidder the basis on which the ACMA believes that the bidder is affiliated with the other bidder.
- (3) If a bidder gave the ACMA information under subsection 59(1) about an affiliation with an existing 1800 MHz licensee, and the ACMA does not consider that the bidder is

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affiliated with the licensee, the ACMA must tell the bidder in writing that the ACMA does not consider it to be affiliated with the licensee.

- (4) If a bidder gave the ACMA information under subsection 59(2) about an affiliation with another bidder, and the ACMA does not consider that the bidder is affiliated with the other bidder, the ACMA must tell the bidder in writing that the ACMA does not consider it to be affiliated with the other bidder.

Part 7—Procedures after auction

Division 1—Simplified outline

62 Simplified outline of this Part

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

After the winning bidder for each lot has been identified, the ACMA must notify the unsuccessful bidders and applicants who were not registered as bidders that their confidentiality obligations have ended. The ACMA must give each winning bidder for a 1800 MHz lot information about the other winning bidders for 1800 MHz lots. Each winning bidder for a 1800 MHz lot must make a statement about whether it is affiliated with any other winning bidder for a 1800 MHz lot or an existing 1800 MHz licensee.

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

A winning bidder must pay the balance of the winning price for a licence; this is the winning price for the licence less any deposit paid. If a winning bidder fails to pay the balance of the winning price for a licence, the winning bidder is not entitled to be issued the licence.

Division 2—Application of this Part

63 This Part applies if an auction is conducted

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

Division 3—Confirmation of auction results

64 Notice and refunds to unsuccessful bidders and withdrawn applicants

- (1) As soon as practicable after the end of the auction period, the ACMA must notify each bidder that is not a winning bidder that:
 - (a) the bidder was unsuccessful in the auction; and
 - (b) the bidder's confidentiality obligations under section 17 have ended.
- (2) If the unsuccessful bidder paid a deposit, the ACMA must refund the payment no later than 6 months after sending the notice under subsection (1) unless the ACMA has made a decision to retain the deposit under section 81.

Note: Section 81 enables the ACMA to retain a deposit if it is satisfied certain breaches of this instrument have occurred.

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

- (4) 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 subsection (1) unless the ACMA has made a decision to retain the deposit under section 81.

Note: Section 81 enables the ACMA to retain a deposit if it is satisfied certain breaches of this instrument have occurred.

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

- (1) As soon as practicable after the end of the auction period, the ACMA must:
- (a) give each winning bidder for a 1800 MHz lot details of each other winning bidder for a 1800 MHz lot, and details of those bidders' associates; and
 - (b) ask each such bidder to make a statement whether the bidder is an affiliate of:
 - (i) an existing 1800 MHz licensee and, if so, identifying the existing 1800 MHz licensee and giving details of the affiliation; or
 - (ii) another winning bidder for a 1800 MHz lot and, if so, identifying the other winning bidder and giving details of the affiliation.

Note: An existing 1800 MHz licensee may also be a bidder in the auction.

- (2) The ACMA must state a deadline, at least 10 working days after the date of the request, before which the statement must be received by the ACMA.
- (3) A winning bidder must give the ACMA the statement by the deadline.

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

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

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

- (1) If the ACMA is satisfied that one or more winning bidders for a 1800 MHz lot is affiliated with an existing 1800 MHz licensee that is not also a winning bidder for an 1800 MHz lot, the ACMA must notify the winning bidders in writing and tell each bidder the basis on which the ACMA is satisfied that the bidder and the existing 1800 MHz licensee are affiliated.
- (2) If the ACMA is satisfied that a winning bidder for a 1800 MHz lot is affiliated with another winning bidder for a 1800 MHz lot, the ACMA must notify each of those winning bidders in writing and tell the bidder the basis on which the ACMA is satisfied that the bidders are affiliated.

67 Consequences of affiliation between winning bidders, or between winning bidders and existing licensees – 1800 MHz lots

- (1) If:
- (a) the ACMA notifies one or more winning bidders under subsection 66(1) that it is satisfied the winning bidders are affiliated with an existing 1800 MHz licensee; and
 - (b) the existing 1800 MHz licensee is not also a winning bidder for a 1800 MHz lot; and
 - (c) the number of lots won by the winning bidders, when the lot size of those lots is aggregated with the part or parts of the spectrum that the existing 1800 MHz

licensee, or the specified group of persons that includes the existing 1800 MHz licensee, may use in the 1800 MHz band, exceeds the 1800 MHz allocation limits;

the ACMA:

- (d) must not issue spectrum licences to the winning bidders that would exceed the 1800 MHz allocation limits; and
- (e) must not issue spectrum licences to the winning bidders except in accordance with this section.

(2) If:

- (a) the ACMA notifies two or more winning bidders under subsection 66(2) that it is satisfied the winning bidders are affiliated; and
- (b) the number of lots won by the winning bidders, when the lot size of those lots is aggregated with a part or parts of the spectrum that the winning bidders, or the specified group of persons that includes the winning bidders, may use in the 1800 MHz band, exceeds the 1800 MHz allocation limits;

the ACMA:

- (c) must not issue spectrum licences to the winning bidders that would exceed the 1800 MHz allocation limits; and
- (d) must not issue spectrum licences to the winning bidders except in accordance with this section.

Note: One of the winning bidders may also be an existing 1800 MHz licensee.

- (3) For each winning bidder, the ACMA must identify, in relation to the 1800 MHz lots for which the bidder is a winning bidder (*the total lots*), each lot where the aggregate of:
 - (a) the lot size of the lot; and
 - (b) the part or parts of the spectrum that the applicant, or the specified group of persons that includes the applicant, may use in the 1800 MHz band;does not exceed the 1800 MHz allocation limits.

- (4) If, for a winning bidder, the ACMA identifies one or more of total lots under subsection (3):
 - (a) subject to this instrument, the winning bidder is entitled to be issued a spectrum licence for those lots; and
 - (b) the ACMA must not issue a spectrum licence for the remaining total lots to the winning bidder.

Note: The winning bidder must still pay the balance of the winning price before being issued the spectrum licence, in accordance with Division 4. The balance of the winning price is calculated on the basis of the lots for which the bidder is the winning bidder, regardless of the effect of this section.

- (5) If no lot can be identified under subsection (3), the ACMA must not issue a spectrum licence for any 1800 MHz lot to that bidder.
- (6) If, as a result of the operation of this section, a spectrum licence is not issued for a lot for which there is a winning bidder, section 76 applies to that lot.

Division 4—Payment and issue of spectrum licences

68 The winning bid price for a lot

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

- (a) if there is only one bid on the lot – the starting price for the lot; or

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

69 The winning price and the balance of the winning price

- (1) The *winning price* for a winning bidder is the sum of the winning bid prices for the lots won by the bidder.
- (2) 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 bidder.

70 Sufficient deposit – issue of spectrum licence without further payment

- (1) If, for a winning bidder, the balance of the winning price is less than zero:
 - (a) the ACMA must refund the deposit in excess of the total of the winning price for the winning bidder; and
 - (b) the bidder is entitled to be issued a spectrum licence for each part of the spectrum represented by the lots won by the bidder without further payment.

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

- (2) If, for a winning bidder, the balance of the winning price is zero, the bidder is entitled to be issued a spectrum licence for each part of the spectrum represented by the lots won by the bidder without further payment.

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

71 Payment of balance of winning price

- (1) If, for a winning bidder, the balance of the winning price is greater than zero, the ACMA must notify the bidder by registered mail of the lots won by the bidder and the balance of the winning price.
- (2) The balance of the winning price must be paid to the ACMA on behalf of the Commonwealth no later than 20 working days after the date of the notice.

Note: For information on how the balance of the winning price must be paid, see section 7.
- (3) If the ACMA becomes aware that a notice under subsection (1) contains a material error, the ACMA must give the winning bidder a revised notice by registered mail.
- (4) If a revised notice is given under subsection (3), the balance of the winning price must be paid to the ACMA on behalf of the Commonwealth no later than:
 - (a) if the revised notice is given within 20 working days after the date of the original notice – 30 working days after the date of the original notice;
 - (b) in any other case – 10 working days after the date of the revised notice.

72 Issue of spectrum licence

If a winning bidder pays the balance of the winning price in accordance with section 71, the winning bidder is entitled to be issued a spectrum licence for each part of the spectrum represented by the lots won by the bidder.

Note 1: For the issue of spectrum licences, see section 62 of the Act.

Note 2: Section 67 may affect the ability of the ACMA to issue a spectrum licence to a winning bidder.

73 Default

If a winning bidder does not pay the balance of the winning price in accordance with section 71:

- (a) the spectrum licence is not allocated to the winning bidder; and
- (b) the allocation of spectrum licences under this instrument to other applicants is not affected; and
- (c) section 76 applies to each lot that, but for this section, would have been included in a spectrum licence allocated to the winning bidder.

Note: See section 86 in relation to the rights of the ACMA and the Commonwealth.

74 Publication of auction results

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

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

Part 8—Miscellaneous

75 Simplified outline of this Part

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

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

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

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

76 Unallocated spectrum

Parts of the spectrum that are offered at auction or for a pre-determined price but not allocated may be later offered for allocation in accordance with Schedule 4.

Note: Schedule 4 sets out a procedure for the allocation of spectrum licences for a pre-determined price.

77 Bidders must not misuse auction system

- (1) A bidder must only access and use the auction system in accordance with the information about access and use provided under section 51.
- (2) A bidder must not attempt to interfere with, disrupt or damage the auction system.
- (3) A bidder must not attempt to use the auction system to breach a law of the Commonwealth.

78 ACMA may obtain information from applicants and bidders

- (1) If the ACMA has reason to believe that an applicant or bidder, or a post-auction applicant within the meaning given by Schedule 4, has information or documents that are relevant to the performance of any of the ACMA's functions or the exercise of its powers under this instrument, the ACMA may, by written notice, require the applicant, bidder or post-auction applicant:
 - (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents.

Note: If a requirement in a notice given under this subsection is breached, the ACMA may take action under section 81.

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

79 Use of information and documents by ACMA

- (1) The ACMA may use information or documents it obtains in the performance of its functions under this instrument:
 - (a) for the purposes of this instrument, including disclosing or publishing information or documents as provided for in this instrument; and
 - (b) in relation to a spectrum licence issued or to be issued as a result of the allocation process or as a result of the process set out in Schedule 4.
- (2) The ACMA may retain possession of a document or other item given to the ACMA for the purposes of this instrument for as long as necessary for the performance of the ACMA's functions and exercise of its powers under this instrument or the Act.
- (3) The ACMA may disclose information or documents in accordance with Part 7A of the *Australian Communications and Media Authority Act 2005* or as otherwise authorised by law.

80 ACMA to provide information to ACCC on request

- (1) The ACCC may make a request to the ACMA for information in relation to the allocation process or the process set out in Schedule 4, or in relation to an applicant or bidder, or post-auction applicant within the meaning given by Schedule 4.
- (2) The ACMA must provide the requested information to the ACCC if the ACMA has the information.
- (3) Without limiting subsection (1), information that the ACCC may request includes the following:
 - (a) completed application forms;
 - (b) completed preference nomination forms;
 - (c) deeds of confidentiality;
 - (d) information about an applicant's associates and affiliations;
 - (e) information about any breaches of confidentiality obligations;
 - (f) information about the outcomes of the procedures in Part 5;
 - (g) information about bidding during the auction;
 - (h) information about the outcomes of the procedures in Part 7;
 - (i) post-auction applications, within the meaning given by Schedule 4;
 - (j) information about the outcomes of the procedures in Schedule 4.

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

- (1) The ACMA on behalf of the Commonwealth may retain a deposit made by an applicant or bidder, or enforce a deed of financial security given by an applicant or bidder; if:
 - (a) the ACMA is satisfied that:
 - (i) the applicant or bidder, or a related person of the applicant or bidder, breached a provision of this instrument; and
 - (ii) the breach affected, or may have affected, the outcome of the allocation process; or
 - (b) the applicant failed to pay the balance of the pre-determined price as required under section 44; or
 - (c) the bidder is a winning bidder who failed to give the statement required under section 65; or

- (d) the bidder is a winning bidder who failed to pay the balance of the winning price as required under section 71; or
 - (e) 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
 - (f) the applicant or bidder failed to comply with a requirement in a notice given under subsection 78(1).
- (2) The ACMA must notify the applicant or bidder, in writing, of a decision under subsection (1) and the nature of the breach or failure before the later of:
- (a) 6 months after:
 - (i) if notice was given to the applicant under subsection 44(1) – the day the notice was given; or
 - (ii) in any other case – the end of the auction period; and
 - (b) 6 months after the day on which the breach or failure mentioned in subsection (1) occurred.
- (3) A deposit retained under this section, or an amount obtained through enforcement of a deed of financial security, is forfeited to the Commonwealth unless the Federal Court orders the return of the amount under section 84.

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

If the ACMA makes a decision under subsection 81(1) in relation to an applicant notified under subsection 44(1):

- (a) despite subsection 40(5), the ACMA must not issue a spectrum licence to the applicant; and
- (b) section 76 applies to each lot that, but for this section, would have been included in a spectrum licence allocated to the applicant.

83 Effect of retention on winning bidders

If the ACMA makes a decision under subsection 81(1) in relation to a winning bidder:

- (a) despite subsections 67(4), 70(1) and 70(2), and section 72, the ACMA must not issue a spectrum licence to the winning bidder; and
- (b) section 76 applies to each lot that, but for this section, would have been included in a spectrum licence allocated to the winning bidder.

84 Application to Federal Court for return of retained amount

- (1) An applicant or bidder who has been notified by the ACMA under subsection 81(2) may, within one year of receiving the notice, apply to the Federal Court for return of all or part of a deposit or an amount secured by a deed of financial security.
- (2) On application, the Federal Court may:
 - (a) if the Court is not satisfied that the applicant or bidder committed the breach or failure identified in the notice given by the ACMA – order the return of all the amount retained by the ACMA; or
 - (b) if the Court is satisfied that the applicant or bidder committed the breach or failure, but considers that it would be disproportionate for the full amount to be retained – order the return of part of the amount retained by the ACMA.

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

85 Liability of ACMA, auction manager and the Commonwealth

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

86 Other rights not affected

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

87 Auction manager may delegate functions and powers

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

- (a) a member of the ACMA; or
- (b) a member of the ACMA staff that:
 - (i) holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position; or
 - (ii) is an SES employee or acting SES employee.

Note: *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

Schedule 1—Auction rules

(subsections 4(1) and 55(2))

Part 1—Auction arrangements

1 Schedule for rounds of the auction

- (1) Rounds of the auction must start and end between 9.00 am and 5.00 pm on working days, other than a recess day.
- (2) The scheduling of rounds between those times is at the auction manager's discretion.
- (3) There is no minimum or maximum length for a round, and no minimum or maximum length for the interval between rounds.
- (4) There is no upper or lower limit on the number of rounds per day.
- (5) Subject to section 56, the auction system will indicate the anticipated schedule of rounds for a given day at least 1 hour before the start time of the first round of the day. However, the auction manager may, at any time, modify the schedule of rounds. If this occurs, the auction manager must inform all bidders of the change as soon as practicable.

2 Rounds of the auction

- (1) During a round of the auction, a bidder may make a bid on a lot, and may make a bid on each lot available for bidding in the round.
Note: Each bid is made on a single lot: see the definition of *bid* in subsection 4(1).
- (2) The first round of the auction, and, subject to subclauses (4) and (6), each subsequent round of the auction, will be for bids on the first product lots.
- (3) Subclause (2) applies regardless of whether:
 - (a) there is a bidder that has nominated a first product lot as one of its preferred lots; or
 - (b) Part 6 of the instrument applies to a first product lot.

Note: If no bidder has nominated a first product lot, or if Part 6 of the instrument does not apply to any first product lot, no bids may be made in the first round of the auction, and the first round of the auction is the final round in stage 1.

- (4) If a round is the final round in stage 1, the next round of the auction and, subject to subclause (6), each subsequent round of the auction, will be for bids on the second product lots.

Note 1: For the final round in stage 1 (that is, the final round for bids on the first product lots), see clause 11.

Note 2: After the final round in stage 1, stage 2 commences.

- (5) Subclause (4) applies regardless of whether:
 - (a) there is a bidder that has nominated a second product lot as one of its preferred lots; or
 - (b) Part 6 of the instrument applies to a second product lot.

Note: If no bidder has nominated a second product lot, or if Part 6 of the instrument does not apply to any second product lot, no bids may be made in the first round in stage 2, and the first round in stage 2 is the final round in stage 2.

- (6) If a round is the final round in stage 2, the next round of the auction and each subsequent round of the auction will be for bids on the third product lots.

Note 1: For the final round in stage 2 (that is, the final round for bids on the second product lots), see clause 11.

Note 2: After the final round in stage 2, stage 3 commences.

- (7) Subclause (6) applies regardless of whether:
- (a) there is a bidder that has nominated a third product lot as one of its preferred lots;
 - or
 - (b) Part 6 of the instrument applies to a third product lot.

Note: If no bidder has nominated a third product lot, or if Part 6 of the instrument does not apply to any third product lot, no bids may be made in the first round in stage 3, and the first round in stage 3 is the final round of the auction.

- (8) During a round, and subject to this Schedule:
- (a) if the round is a round in stage 1 – each bidder may make a bid on each first product lot that is one of the bidder’s preferred lots;
 - (b) if the round is a round in stage 2 – each bidder may make a bid on each second product lot that is one of the bidder’s preferred lots;
 - (c) if the round is a round in stage 3 – each bidder may make a bid on each third product lot that is one of the bidder’s preferred lots.
- (9) Before the start time of each round in stage 1, the auction manager must provide the following information to each bidder who nominated a first product lot as a preferred lot, using the auction system:
- (a) the start time of the round;
 - (b) the end time of the round;
 - (c) the specified price that will apply to each first product lot in the round;
 - (d) for each round other than the first round in stage 1 – the specified price that applied to each first product lot in the previous round;
 - (e) the total number of bidders that have nominated each first product lot as a preferred lot;
 - (f) any other information the ACMA considers necessary or convenient to conduct the auction.
- (10) After each round in stage 1, the auction manager must provide the following information to each bidder who nominated a first product lot as a preferred lot, using the auction system:
- (a) the bids made by the bidder during the round (if any);
 - (b) if, as a result of the round, the bidder is the winning bidder for a first product lot – the winning price for that lot;
 - (c) the number of bidders remaining in the auction for each first product lot after the end of the round;
 - (d) any other information the ACMA considers necessary or convenient to conduct the auction.
- (11) Before the start time of each round in stage 2, the auction manager must provide the following information to each bidder who nominated a second product lot as a preferred lot, using the auction system:
- (a) the start time of the round;
 - (b) the end time of the round;
 - (c) the specified price that will apply to each second product lot in the round;

- (d) for each round other than the first round in stage 2 – the specified price that applied to each second product lot in the previous round;
 - (e) the total number of bidders that have nominated each second product lot as a preferred lot;
 - (f) any other information the ACMA considers necessary or convenient to conduct the auction.
- (12) After each round in stage 2, the auction manager must provide the following information to each bidder who nominated a second product lot as a preferred lot, using the auction system:
- (a) the bids made by the bidder during the round (if any);
 - (b) if, as a result of the round, the bidder is the winning bidder for a second product lot – the winning price for that lot;
 - (c) the number of bidders remaining in the auction for each second product lot after the end of the round;
 - (d) any other information the ACMA considers necessary or convenient to conduct the auction.
- (13) Before the start time of each round in stage 3, the auction manager must provide the following information to each bidder who nominated a third product lot as a preferred lot, using the auction system:
- (a) the start time of the round;
 - (b) the end time of the round;
 - (c) the specified price that will apply to each third product lot in the round;
 - (d) for each round other than the first round in stage 3 – the specified price that applied to each third product lot in the previous round;
 - (e) the total number of bidders that have nominated each third product lot as a preferred lot;
 - (f) any other information the ACMA considers necessary or convenient to conduct the auction.
- (14) After each round in stage 3, the auction manager must provide the following information to each bidder who nominated a third product lot as a preferred lot, using the auction system:
- (a) the bids made by the bidder during the round (if any);
 - (b) if, as a result of the round, the bidder is the winning bidder for a third product lot – the winning price for that lot;
 - (c) the number of bidders remaining in the auction for each third product lot after the end of the round;
 - (d) any other information the ACMA considers necessary or convenient to conduct the auction.

3 Recess days

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

Part 2—Bidding in the auction

4 When bidder cannot make a bid on a lot

- (1) If, in a round in stage 1:
- (a) a bidder does not make a bid on a first product lot; or
 - (b) a bidder is an exit bidder in the circumstances set out in clause 10 in relation to a first product lot;
- the bidder cannot make a bid on that first product lot in any subsequent round of the auction.

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

Note 2: An exit bid made by the bidder may still be the final high bid for a lot, except where clause 10 applies.

- (2) If, in a round in stage 2:
- (a) a bidder does not make a bid on a second product lot; or
 - (b) a bidder is an exit bidder in the circumstances set out in clause 10 in relation to a second product lot;
- the bidder cannot make a bid on that second product lot in any subsequent round of the auction.

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

Note 2: An exit bid made by the bidder may still be the final high bid for a lot, except where clause 10 applies.

- (3) If, in a round in stage 3:
- (a) a bidder does not make a bid on a third product lot; or
 - (b) a bidder is an exit bidder in the circumstances set out in clause 10 in relation to a third product lot;
- the bidder cannot make a bid on that third product lot in any subsequent round of the auction.

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

Note 2: An exit bid made by the bidder may still be the final high bid for a lot, except where clause 10 applies.

5 Starting price and specified price

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

Note: For starting prices, see section 26. For the validity of bids, see clause 9.

- (2) The **specified price** for a first product lot in the first round of stage 1 is the sum of:
- (a) the starting price for the lot; and
 - (b) the bid increment percentage for the lot multiplied by that starting price; rounded up to the next thousand.
- (3) Subject to subclause (8), the **specified price** for a first product lot in a round of the auction, other than the first round in stage 1, is the sum of:
- (a) the specified price for the lot in the previous round; and
 - (b) the bid increment percentage for the lot multiplied by that specified price; rounded up to the next thousand.

- (4) The **specified price** for a second product lot in the first round in stage 2 is the sum of:

- (a) the starting price for the lot; and
 - (b) the bid increment percentage for the lot multiplied by that starting price; rounded up to the next thousand.
- (5) Subject to subclause (8), the *specified price* for a second product lot in a round of the auction after the first round in stage 2 is the sum of:
- (a) the specified price for the lot in the previous round; and
 - (b) the bid increment percentage for the lot multiplied by that specified price; rounded up to the next thousand.
- (6) The *specified price* for a third product lot in the first round in stage 3 is the sum of:
- (a) the starting price for the lot; and
 - (b) the bid increment percentage for the lot multiplied by that starting price; rounded up to the next thousand.
- (7) Subject to subclause (8), the *specified price* for a third product lot in a round of the auction after the first round in stage 3 is the sum of:
- (a) the specified price for the lot in the previous round; and
 - (b) the bid increment percentage for the lot multiplied by that specified price; rounded up to the next thousand.
- (8) 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.

6 Changing bid increment percentage to vary specified prices

- (1) The auction manager may, at any time during the auction, change the bid increment percentage for a lot to vary the specified price for a lot in a round.
- Note: For the bid increment percentage, see section 34.
- (2) Before doing this, the auction manager must:
- (a) tell bidders of the proposed change; and
 - (b) ask bidders for their comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received on the proposal.
- (3) The auction manager must notify all bidders of the change before the round when the change takes effect.

7 General rules about bidding

- (1) A bidder:
- (a) may only make a bid on a preferred lot of the bidder; and
 - (b) may only make a bid that is valid in accordance with clause 9; and
 - (c) despite paragraph (a), must not make a bid on a lot if clause 4 or clause 10 provides that the bidder cannot make a bid on the lot.
- (2) Except where subsection 57(1) or 57(2) applies, a bidder's bid is taken to have been made in a round when the bid has passed data validation checks that are performed by the auction system.

Schedule 1—Auction rules

Note: Subsection 57(1) allows the auction manager to permit a bid to be made otherwise than by the auction system, in certain circumstances. Subsection 57(2) allows the auction manager to permit a bid to be made after a round has completed, in certain circumstances.

- (3) A bidder may change, delete or replace a bid in the auction system during a round. The bid that will be treated as binding for a bidder, and will be taken to be the bid made by the bidder in the round, is the bid in the auction system at the end time of the round.

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

8 Continue bid made at greater than specified price

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

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

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

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

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

9 Validity of bids

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

- (a) either:
 - (i) if the round is the first round for bids on a lot – the bid is not less than the starting price for the lot; or
 - (ii) if the round is for bids on a lot, other than the first round for bids on the lot – the bid is not less than the specified price of the lot in the previous round;
- (b) subject to subsection 58(2), it is received by the auction system between the start time and end time of the round;
- (c) it is a multiple of one thousand.

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

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

10 Exit bids – exclusion from further participation

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

- (a) a bidder (the *exit bidder*) makes an exit bid on a lot (whether or not any other bidder also makes an exit bid on the lot); and

(b) two or more bidders make a continue bid on the lot;
the exit bidder cannot make a bid on the lot in any subsequent round.

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

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

Part 3—Determining the winning bidder for a lot

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

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

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

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

- (2) If, in relation to a round, each of the following applies:
- the round was a round for bids on the first product lots; and
 - after the round, the final round for bids on a lot has occurred for each first product lot;

the round is the *final round for bids on the first product lots*.

Note: The round after the final round for bids on the first product lots is the first round for bids on the second product lots (that is, the first round in stage 2): see section 4.

- (3) If, in relation to a round, each of the following applies:
- the round was a round for bids on the second product lots; and
 - after the round, the final round for bids on a lot has occurred for each second product lot;

the round is the *final round for bids on the second product lots*.

Note: The round after the final round for bids on the second product lots is the first round for bids on the third product lots (that is, the first round in stage 3): see section 4.

- (4) If, in relation to a round, each of the following applies:
- the round was a round for bids on the third product lots; and
 - after the round, the final round for bids on a lot has occurred for each third product lot;

the round is the *final round of the auction*.

- (5) For a lot other than a lot for which no bids were made in the first round for bids on that lot, the *final high bid* is:
- if one bid was made on the lot in the final round for bids on the lot – that bid;
 - if one continue bid was made on the lot in the final round for bids on the lot – that continue bid;
 - if each of the following applies:
 - no continue bid was made on the lot in the final round for bids on the lot; and
 - two or more exit bids were made on the lot in the final round for bids on the lot; and
 - one of those exit bids (the *high exit bid*) was greater than each of the other exit bids;

- the high exit bid;
 - (d) in any other case – worked out in accordance with clause 12.
- (6) Subject to subclause 12(2), the bidder who made the final high bid on a lot is the **winning bidder** for that lot.

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

12 Tiebreaker for a lot

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

Part 4—Bringing the auction to a close

13 Close of the auction

- (1) The auction will close immediately after:
- (a) if:
 - (i) clause 12 applies in relation to a third product lot; and
 - (ii) for each other third product lot, either:
 - (A) there is a winning bidder for the lot; or
 - (B) there were no bids on the lot in the first round in stage 3;
 - the pseudorandom selection mentioned in subclause 12(2) occurs; or
 - (b) in any other case – the final round of the auction.
- (2) After the auction closes, the auction manager must tell each bidder, using the auction system, that the auction has closed.

Schedule 2—Parts of the spectrum

(subsection 4(1))

Part 1—1800 MHz band and 1800 MHz lots

1 Interpretation

In this Part:

Dubbo means the region of that name, as described in Schedule 2 to the 1800 MHz Marketing Plan.

Mackay means the region of that name, as described in Schedule 2 to the 1800 MHz Marketing Plan.

Maryborough means the region of that name, as described in Schedule 2 to the 1800 MHz Marketing Plan.

Regional Western Australia means the region of that name, as described in Schedule 2 to the 1800 MHz Marketing Plan.

Tasmania means the region of that name, as described in Schedule 2 to the 1800 MHz Marketing Plan.

2 The 1800 MHz band

- (1) The parts of the spectrum in the **1800 MHz band** are the following frequency ranges:
 - (a) 1725 MHz to 1785 MHz; and
 - (b) 1820 MHz to 1880 MHz;in regional Australia.
- (2) In subclause (1), **regional Australia** has the meaning given by the 1800 MHz re-allocation declaration.

3 The 1800 MHz lots

- (1) Each item in Table 1 is a **1800 MHz lot**.
- (2) For each 1800 MHz lot:
 - (a) the number of the lot is specified in column 1 of an item in Table 1;
 - (b) the name of the lot is specified in column 2 of that item;
 - (c) the lot represents both:
 - (i) the lower frequency range set out in column 3 of that item; and
 - (ii) the upper frequency range set out in column 4 of that item;in the geographic area set out in column 6 of that item; and
 - (d) the lot has the lot size specified in column 5 of that item, in each of the lower frequency range set out in column 3 and the upper frequency range set out in column 4 of that item.

Table 1 1800 MHz lots

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Lot number	Lot name	Lower frequency range	Upper frequency range	Lot size	Geographic area
1	1	DUBB01	1775 MHz– 1780 MHz	1870 MHz– 1875 MHz	5 MHz	Dubbo
2	2	MACK01	1775 MHz– 1785 MHz	1870 MHz– 1880 MHz	10 MHz	Mackay
3	3	MARY01	1745 MHz– 1750 MHz	1840 MHz– 1845 MHz	5 MHz	Maryborough
4	4	REGW01	1780 MHz– 1785 MHz	1875 MHz– 1880 MHz	5 MHz	Regional Western Australia
5	5	TASM01	1750 MHz– 1755 MHz	1845 MHz– 1850 MHz	5 MHz	Tasmania

Part 2—2 GHz lots

4 Interpretation

In this Part:

Adelaide means the region of that name, as described in Schedule 2 to the 2 GHz marketing plan.

Brisbane A means the region of that name, as described in Schedule 2 to the 2 GHz marketing plan.

Canberra A means the region of that name, as described in Schedule 2 to the 2 GHz marketing plan.

Canberra B means the region of that name, as described in Schedule 2 to the 2 GHz marketing plan.

Darwin means the region of that name, as described in Schedule 2 to the 2 GHz marketing plan.

Hobart means the region of that name, as described in Schedule 2 to the 2 GHz marketing plan.

Perth means the region of that name, as described in Schedule 2 to the 2 GHz marketing plan.

5 The 2 GHz lots

- (1) Each item in Table 2 is a **2 GHz lot**.
- (2) For each 2 GHz lot:
 - (a) the number of the lot is specified in column 1 of an item in Table 2;
 - (b) the name of the lot is specified in column 2 of that item;
 - (c) the lot represents both:
 - (i) the lower frequency range set out in column 3 of that item; and
 - (ii) the upper frequency range set out in column 4 of that item;

Schedule 2—Parts of the spectrum

in the geographic area set out in column 6 of that item.

Table 2 2 GHz lots

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item	Lot number	Lot name	Lower frequency range	Upper frequency range	Bandwidth	Geographic area
1	6	CBRB01	1920 MHz– 1930 MHz	2110 MHz– 2120 MHz	10 MHz	Canberra B
2	7	DARW01	1920 MHz– 1930 MHz	2110 MHz– 2120 MHz	10 MHz	Darwin
3	8	HOBA01	1920 MHz– 1930 MHz	2110 MHz– 2120 MHz	10 MHz	Hobart
4	9	ADEL01	1930 MHz– 1935 MHz	2120 MHz– 2125 MHz	5 MHz	Adelaide
5	10	BRIA01	1930 MHz– 1935 MHz	2120 MHz– 2125 MHz	5 MHz	Brisbane A
6	11	CBRA01	1930 MHz– 1935 MHz	2120 MHz– 2125 MHz	5 MHz	Canberra A
7	12	DARW02	1930 MHz– 1935 MHz	2120 MHz– 2125 MHz	5 MHz	Darwin
8	13	HOBA02	1930 MHz– 1935 MHz	2120 MHz– 2125 MHz	5 MHz	Hobart
9	14	PERT01	1930 MHz– 1935 MHz	2120 MHz– 2125 MHz	5 MHz	Perth

Note 1: Lots 6, 7 and 8 are first product lots. The remainder are second product lots.

Note 2: Column 5 is included for information only. The bandwidth described is the bandwidth of the each of the part of the lot in the lower frequency range and the part of the lot in the upper frequency range.

Part 3—2.3 GHz lots

6 Interpretation

In this Part:

Cameron Corner means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Central Australia means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Delamere means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Geraldton/Kalgoorlie means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Gold Fields means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Kimberley means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Schedule 2—Parts of the spectrum

Melbourne means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Mid West Radio Quiet Zone means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

NSW East means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Outer ACT means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

Telfer Mine means the region of that name, as described in Schedule 2 to the 2.3 GHz marketing plan.

7 The 2.3 GHz lots

- (1) Each item in Table 3 is a **2.3 GHz lot**.
- (2) For each 2.3 GHz lot:
 - (a) the number of the lot is specified in column 1 of an item in Table 3;
 - (b) the name of the lot is specified in column 2 of that item;
 - (c) the lot represents the frequency range set out in column 3 of that item, in the geographic area set out in column 5 of that item.

Table 3 2.3 GHz lots

	Column 1	Column 2	Column 3	Column 4	Column 5
Item	Lot number	Lot name	Frequency range	Bandwidth	Geographic area
1	15	CAME01	2365 MHz– 2400 MHz	35 MHz	Cameron Corner
2	16	CENT01	2337 MHz– 2365 MHz	28 MHz	Central Australia
3	17	DELA01	2302 MHz– 2400 MHz	98 MHz	Delamere
4	18	GEKA01	2365 MHz– 2400 MHz	35 MHz	Geraldton/Kalgoorlie
5	19	GOLD01	2337 MHz– 2365 MHz	28 MHz	Gold Fields
6	20	KIMB01	2365 MHz– 2400 MHz	35 MHz	Kimberley
7	21	MELB01	2393 MHz– 2400 MHz	7 MHz	Melbourne
8	22	RQZW01	2337 MHz– 2365 MHz	28 MHz	Mid West Radio Quiet Zone
9	23	NSWE01	2393 MHz– 2400 MHz	7 MHz	NSW East
10	24	ACTO01	2302 MHz– 2330 MHz	28 MHz	Outer ACT
11	25	TELF01	2302 MHz– 2400 MHz	98 MHz	Telfer Mine

Note: Column 4 is included for information only.

Part 4—3.4 GHz lots

8 Interpretation

In this Part:

Adelaide means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

Brisbane B means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

Canberra A means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

Hobart means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

Launceston means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

Rockhampton means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

Sydney B means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

Toowoomba means the region of that name, as described in Schedule 2 to the 3.4 GHz marketing plan.

9 The 3.4 GHz lots

- (1) Each item in Table 4 is a **3.4 GHz lot**.
- (2) For each 3.4 GHz lot:
 - (a) the number of the lot is specified in column 1 of an item in Table 4;
 - (b) the name of the lot is specified in column 2 of that item;
 - (c) the lot represents the frequency range set out in column 3 of that item, in the geographic area set out in column 5 of that item.

Table 4 3.4 GHz lots

	Column 1	Column 2	Column 3	Column 4	Column 5
Item	Lot number	Lot name	Frequency range	Bandwidth	Geographic area
1	26	ADEL02	3439 MHz– 3442.5 MHz	3.5 MHz	Adelaide
2	27	BRIB01	3490 MHz– 3492.5 MHz	2.5 MHz	Brisbane B
3	28	BRIB02	3542.5 MHz– 3575 MHz	32.5 MHz	Brisbane B
4	29	CBRA02	3490 MHz– 3492.5 MHz	2.5 MHz	Canberra A
5	30	CBRA03	3542.5 MHz– 3547 MHz	4.5 MHz	Canberra A

Schedule 2—Parts of the spectrum

Item	Column 1 Lot number	Column 2 Lot name	Column 3 Frequency range	Column 4 Bandwidth	Column 5 Geographic area
6	31	HOBA03	3439 MHz– 3442.5 MHz	3.5 MHz	Hobart
7	32	HOBA04	3489 MHz– 3492.5 MHz	3.5 MHz	Hobart
8	33	LAUN01	3439 MHz– 3442.5 MHz	3.5 MHz	Launceston
9	34	LAUN02	3489 MHz– 3492.5 MHz	3.5 MHz	Launceston
10	35	ROCK01	3490 MHz– 3492.5 MHz	2.5 MHz	Rockhampton
11	36	ROCK02	3542.5 MHz– 3547 MHz	4.5 MHz	Rockhampton
12	37	SYDB01	3542.5 MHz– 3546 MHz	3.5 MHz	Sydney B
13	38	TOOW01	3490 MHz– 3492.5 MHz	2.5 MHz	Toowoomba
14	39	TOOW02	3542.5 MHz– 3547 MHz	4.5 MHz	Toowoomba

Note: Column 4 is included for information only.

Schedule 3—Allocation limits

(section 10)

1 The 1800 MHz allocation limits

- (1) The *1800 MHz allocation limits* are:
 - (a) 25 MHz of spectrum available in the frequency range 1725 MHz to 1785 MHz in regional Australia; and
 - (b) 25 MHz of spectrum available in the frequency range 1820 MHz to 1880 MHz in regional Australia.
- (2) For the purposes of subclause (1), *regional Australia* has the meaning given by the 1800 MHz allocation limits direction.

Schedule 4—Post-auction allocation

(section 76)

Part 1—Preliminary

1 Application of Schedule

- (1) This Schedule applies in relation to a lot to which section 76 of the instrument applies.
- (2) If Part 6 of this instrument applies to at least one lot, the ACMA must not exercise a power, or perform a function, under this Schedule before the end of the auction period.

2 Interpretation

- (1) In this Schedule:

application notice means a notice published under subclause 3(1).

application opening date and time: see paragraph 3(1)(e) of this Schedule.

post-auction allocation process means the process set out in this Schedule.

post-auction applicant: see subclause 5(1).

post-auction applicant information package means a package containing the information, forms and other documents set out in subclause 4(1).

post-auction application means an application made under subclause 5(1).

post-auction application fee means an amount determined by the ACMA for paragraph 4(1)(k) of this Schedule.

post-auction application form means the form approved by the ACMA under paragraph 4(1)(g) of this Schedule.

post-auction deed of acknowledgement means a deed in the form approved by the ACMA under paragraph 4(1)(i) of this Schedule that has been completed and executed by a post-auction applicant in accordance with this Schedule and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this Schedule.

Note: Strict compliance with the form is required.

post-auction pre-determined price for a spectrum licence: see subclauses (2) and (3).

relevant period for a spectrum licence means the period:

- (a) commencing on the date the licence is, or is proposed, to come into force; and
 - (b) ending on the date the licence ceases to be in force.
- (2) For a spectrum licence that is to come into force on 1 February 2018, the *post-auction pre-determined price* is worked out as follows:
 - (a) identify each lot to be included in the spectrum licence;
 - (b) add up the starting prices for each of those lots.
 - (3) For a spectrum licence that is to come into force on a day after 1 February 2018, the *post-auction pre-determined price* is worked out as follows:
 - (a) identify each lot to be included in the spectrum licence;

- (b) add up the starting prices for each of those lots (**primary amount**);
 - (c) apply the formula in subclause (4) to the primary amount for the licence.
- (4) For the purposes of paragraph (3)(c), the formula is:

$$PAPDP = \frac{PAL}{\left(1 / \left((1+z)^n \frac{1 - \left(\frac{1+z}{1+r} \right)^m}{1 - \left(\frac{1+z}{1+r} \right)^n} \right) + \frac{1}{(1+r)^n} \right)}$$

where, for a spectrum licence:

m means the number of days in the relevant period for the licence.

n means the number of days in the period:

- (a) commencing 1 February 2018; and
- (b) ending on the day before the commencement of the relevant period for the licence.

PAL means the primary amount for the licence.

PAPDP means the post-auction pre-determined price for the licence.

r equals 0.0001467.

z equals 0.0000677.

Part 2—Post-auction applications

3 Publication of advertisement

- (1) The ACMA may publish on its website a notice that:
 - (a) describes the spectrum licences that are available for allocation under this Schedule, by reference to the lots to which this Schedule applies; and
 - (b) sets out the method for calculating the post-auction pre-determined price; and
 - (c) states that the allocation will be conducted in accordance with this Schedule; and
 - (d) invites persons to make a post-auction application for a spectrum licence mentioned in paragraph (a); and
 - (e) states the date and time (the **application opening date and time**) after which a person may make a post-auction application for a spectrum licence mentioned in paragraph (a); and
 - (f) states that post-auction applications may not be withdrawn; and
 - (g) states that the post-auction applicant information package can be obtained from the ACMA's website at the electronic address given in the notice.
- (2) Nothing in this Schedule requires the ACMA to publish an application notice.
- (3) The ACMA may publish more than one application notice.
- (4) The ACMA may revoke an application notice by publishing a revocation notice on its website.

- (5) If the ACMA revokes an application notice before the application opening date and time stated in the notice, a person may not make a post-auction application for a spectrum licence described in the notice.
- (6) If the ACMA revokes an application notice after the application opening date and time stated in the notice:
 - (a) a person may not make a post-auction application for a spectrum licence described in the notice after the date the ACMA revokes the notice; and
 - (b) if a person has made a post-auction application for a spectrum licence described in the notice before the date the ACMA revokes notice – Part 3 applies to that application as if the notice had not been revoked.
- (7) If a matter mentioned in an application notice changes, the ACMA must publish another notice giving details of the change on its website.
- (8) The ACMA may publish the information required by subclauses (1), (4) and (7) by additional methods, and may publish other information about the post-auction allocation process by any method.

4 Post-auction applicant information package

- (1) The post-auction applicant information package must contain the following documents and information:
 - (a) if a spectrum licence for a 1800 MHz lot is described in the application notice:
 - (i) the 1800 MHz re-allocation declaration;
 - (ii) the 1800 MHz marketing plan;
 - (iii) the 1800 MHz allocation limits direction;
 - (b) if a spectrum licence for a 2 GHz lot is described in the application notice:
 - (i) the 2 GHz and 3.4 GHz designation notice;
 - (ii) the 2 GHz marketing plan;
 - (c) if a spectrum licence for a 2.3 GHz lot is described in the application notice:
 - (i) the 2.3 GHz designation notice;
 - (ii) the 2.3 GHz marketing plan;
 - (d) if a spectrum licence for a 3.4 GHz lot is described in the application notice:
 - (i) the 2 GHz and 3.4 GHz designation notice;
 - (ii) the 3.4 GHz marketing plan;
 - (e) this instrument;
 - (f) a guide to the post-auction allocation process;
 - (g) a post-auction application form approved by the ACMA, with instructions for completing and giving the form to the ACMA;
 - (h) the starting prices for each lot described in the application notice;
 - (i) a post-auction deed of acknowledgment form approved by the ACMA, that includes a statement to the effect that a post-auction applicant understands and agrees to be bound by the provisions of this Schedule;
 - (j) statutory declaration forms for the purposes of this Schedule;
 - (k) the amount of the application fee for the post-auction allocation process determined by the ACMA;
 - (l) the application opening date and time;
 - (m) the email address for giving documents to the ACMA.

- (2) For the purposes of paragraph (1)(g), a post-auction application form must require a post-auction applicant to state:
 - (a) the date upon which the spectrum licence the subject of the post-auction application would come into force, being a date not later than 2 months after the date the post-auction application is made; and
 - (b) the post-auction applicant's calculation of the post-auction pre-determined price for the licence; and
 - (c) if the post-auction applicant is applying for a spectrum licence for one or more 1800 MHz lots – the associates of the post-auction applicant.
- (3) For the purposes of paragraph (1)(k), the amount of the application fee for the post-auction application process may be zero.

5 Making a post-auction application

- (1) A person (*post-auction applicant*) may apply for a spectrum licence for a lot to which this Schedule applies by:
 - (a) giving the ACMA a completed post-auction application form; and
 - (b) giving the ACMA a post-auction deed of acknowledgement; and
 - (c) paying the post-auction application fee;
 - (d) if the post-auction applicant is applying for a spectrum licence for one or more 1800 MHz lots – a statutory declaration stating whether the post-auction applicant is affiliated with an existing 1800 MHz licensee;after the application opening date and time for the licence.

Note 1: For information on how the application fee must be paid, see section 7.

Note 2: For information on giving documents to the ACMA, see clause 14.

- (2) A post-auction applicant may give the ACMA an updated document for paragraphs (1)(a) or (b) at any time before the ACMA notifies the post-auction applicant under Part 3 of this Schedule, and for paragraph (1)(d) at any time.
- (3) A post-auction application fee paid under this Schedule is not refundable in any circumstances.

Part 3—Allocating and issuing spectrum licences

6 Order of applications

- (1) The ACMA must not consider a post-auction application for a spectrum licence (*the relevant application*) under this Part if:
 - (a) before a person made the relevant application, a person has made a post-auction application for a spectrum licence (*the earlier application*); and
 - (b) none of the following has occurred:
 - (i) the ACMA has issued a spectrum licence to the post-auction applicant that made the earlier application in accordance with this Part 3;
 - (ii) if clause 7 applies in relation to every lot specified in the earlier application – the ACMA has notified the post-auction applicant that made the earlier application under subclause 7(3);
 - (iii) if subclause 8(4) applies to the earlier application – the post-auction applicant that made the earlier application has been notified under that subclause;

- (iv) the person who made the earlier application has failed to pay the post-auction pre-determined price for the spectrum licence by the date included in a notice under paragraph 9(1)(c) of this Schedule.
- (2) If one of the events mentioned in paragraph (1)(b) occurs in relation to the earlier application, the ACMA must consider the relevant application.

7 Post-auction application and the allocation limits

- (1) This clause applies to a post-auction application for a spectrum licence (*the relevant application*) if:
 - (a) the relevant application is for a spectrum licence for one or more 1800 MHz lots (*the relevant lots*); and
 - (b) the aggregate of:
 - (i) the lot size of one or more of the relevant lots; and
 - (ii) the part or parts of the spectrum that the post-auction applicant for the relevant application, or the specified group of persons for the 1800 MHz band that includes that post-auction applicant, may use in the 1800 MHz band; exceeds the 1800 MHz allocation limits.
- (2) The ACMA must not allocate a spectrum licence for the relevant lots to the post-auction applicant for the relevant application.
- (3) The ACMA must notify the post-auction applicant for the relevant application that it is not allocated a spectrum licence for the lots.
- (4) Nothing in this clause prevents the post-auction applicant for the relevant application from making another post-auction application.

8 Earlier allocation of spectrum licence

- (1) This clause applies in relation to a post-auction application for a spectrum licence (*the relevant application*) if:
 - (a) the application is for a licence for one or more lots to which this Schedule applies (*the relevant lots*); and
 - (b) the ACMA has already allocated a spectrum licence for one or more of the relevant lots (*the allocated lots*) to another person.
- (2) The ACMA must not allocate a spectrum licence for the allocated lots to the post-auction applicant that made the relevant application.
- (3) Unless each relevant lot is also an allocated lot, the ACMA must exercise its powers and perform its functions under clauses 7, 9, 10 and 11 as if the relevant application was for the relevant lots other than the allocated lots.
- (4) If each relevant lot is also an allocated lot, the ACMA must notify the post-auction applicant for the relevant application that the ACMA cannot allocate the spectrum licence to the applicant.

9 Offer of spectrum licence

- (1) Subject to clauses 6, 7 and 8, if a post-auction applicant has made a post-auction application for a spectrum licence, the ACMA must consider the application and notify the applicant in writing of:

- (a) if clause 8, other than subclause 8(4), applies in relation to the post-auction application – the effect of clause 8 on the post-auction application; and
 - (b) the post-auction pre-determined price for the licence; and
 - (c) a date, not earlier than 20 working days after the date of the notice, by which the applicant must pay the post-auction pre-determined price for the licence to be allocated to the post-auction applicant.
- (2) The notice sent under subclause (1) must be accompanied by a draft of the spectrum licence.

10 Allocation of licence

If a post-auction applicant pays the post-auction pre-determined price for a spectrum licence by the date included in a notice under paragraph 9(1)(c) of this Schedule, the licence is allocated to that applicant.

11 Issue of licence

- (1) If a licence is allocated to a post-auction applicant, the ACMA must issue the licence to the applicant.
- (2) Subject to subclauses (3) and (4), if a licence is issued in accordance with this clause, it must specify that it comes into force on the day stated in the applicant's completed post-auction application form (*proposed commencement day*).
- (3) Subject to subclause (4), if a licence is issued in accordance with this clause after the proposed commencement day, it must specify that it comes into force on the day it is issued.

Note: Under subsection 65(1) of the Act, a spectrum licence comes into force on the day on which it is issued or on such later day as specified in the licence. A licence will not specify a day earlier than the date it was issued. Accordingly, regardless of the proposed licence period for the licence, the licence issued will not specify a date it comes into force earlier than the date of issue.

- (4) A licence must not specify that it comes into force on a day before 1 February 2018.

12 Default

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 paragraph 9(1)(c):

- (a) the spectrum licence is not allocated to the applicant; and
- (b) the allocation of spectrum licences under this Schedule to any other person is not affected; and
- (c) the ACMA may publish another application notice in relation to a lot that would have been included in the spectrum licence.

Note: See section 86, in relation to the rights of the ACMA and the Commonwealth.

13 Publication of allocation

The ACMA must announce or publish the following information about the allocation of a spectrum licence under clause 10 after it is allocated:

- (a) the name of the post-auction applicant to whom the licence has been allocated;
- (b) the spectrum licence allocated to the post-auction applicant;
- (c) the post-auction pre-determined price for the spectrum licence.

Part 4—Giving documents under this Schedule

14 Giving documents to ACMA

- (1) A document in relation to a lot 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 that relates to the lot in accordance with subsection (2).
- (2) If a document is emailed:
 - (a) the document must be included as an attachment; and
 - (b) the document must be:
 - (i) if the document is a deed or statutory declaration—in PDF format or another format approved by the ACMA; or
 - (ii) if the document is not a deed or statutory declaration—in Word, RTF or PDF format or another format approved by the ACMA.