Commonwealth Coat of Arms

Radiocommunications (Spectrum Licence Allocation — 3.6 GHz Band) Determination 2018

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

Dated  27 July 2018

Creina Chapman

[signed]

Member

James Cameron

[signed]

Member/~~General Manager~~

Australian Communications and Media Authority

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# Part 1—Preliminary

## 1 Name

This is the *Radiocommunications (Spectrum Licence Allocation — 3.6 GHz Band) Determination 2018*.

## 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.

Note:To the extent that this instrument is made under subsection 60(1) of the Act, it is not disallowable under section 42 of the *Legislation Act 2003* (see paragraph 44(2)(b) of the *Legislation Act 2003* and item 29 in the table set out in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). To the extent that this instrument is made under subsection 294(1) of the Act, it is disallowable.

## 4 Interpretation

(1) In this instrument:

***3.6 GHz band*** means the part of the spectrum from 3575 MHz to 3700 MHz.

***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 sections 14 and 15.

***allocated***, for a lot of a product, means allocated as a result of the primary stage or the secondary stage.

***allocation limits***: see sections 11 and 12.

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

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

***application deadline***: see paragraph 26(1)(e).

***application fee*** means the amount set under section 24.

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

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

***assignment bid***: see subclauses 5(1), 5(5) and 5(6) of Schedule 3.

***assignment price***: see clause 2 of Schedule 3.

***assignment round***: see clause 2 of Schedule 3.

***assignment stage*** means the assignment rounds of the auction:

1. commencing with the first assignment round; and
2. ending immediately after the auction manager provides the results for every assignment round in accordance with clauses 9 and 10 of Schedule 3.

***associate***: see subsections 13(1) and 13(2).

***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:

1. commencing on the eligibility deadline; and
2. ending immediately after the auction manager provides the results for the auction in accordance with section 64.

***auction system*** means the system the ACMA makes available to bidders to participate in the auction.

***balance of the winning price***: see subsection 63(2).

***bid***:

1. in a clock round for the primary stage: see subclause 2(1) of Schedule 1;
2. in a round for the secondary stage: see subclause 2(1) of Schedule 2;
3. in an assignment round for the assignment stage, means an assignment bid.

***bidder***means a person registered by the ACMA as a bidder under section 41.

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

***clock round***: for the primary stage, see subclause 2(1) of Schedule 1.

***confidential information***: see section 17.

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

Note: Strict compliance with the form is required.

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

Note: Strict compliance with the form is required.

***deed of financial security*** means a deed in the form approved under paragraph 27(1)(m) 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.

***eligibility deadline***: see paragraph 26(1)(f).

***eligibility payment*** means a payment made by an applicant under section 38.

***eligibility points***: see subclause 2(1) of Schedule 1.

Note: Eligibility points are required to bid in the primary stage, but are not required to bid in the secondary stage.

***existing relevant band licensee*** means:

(a) the licensee of a spectrum licence that authorises the operation of radiocommunications devices; or

(b) the licensee of a PTS licence for a PMTS Class B service (within the meaning given to those expressions in the *Radiocommunications (Interpretation) Determination 2015*) that authorises the operation of radiocommunications devices;

in a part or parts of the spectrum from 3400 MHz to 3700 MHz.

***final clock round***: see clause 16 of Schedule 1.

***final round of the secondary stage***: see subclause 14(2) of Schedule 2.

***initial eligibility points***, for a bidder, means the number of eligibility points secured by the bidder under section 38.

***lot***: see subsection 5(1).

***lot rating*** means the value of a lot of a product in eligibility points set by the ACMA under paragraph 28(1)(b).

***marketing plan*** means the *Radiocommunications Spectrum Marketing Plan (3.6 GHz Band) 2018*.

***minimum spectrum requirement***, for a bidder in relation to lots of a product, means the number of lots of the product selected by the bidder as its minimum requirement in a completed eligibility nomination form given to the ACMA in accordance with paragraph 29(2)(a) or 35(6)(a).

***posted demand***: see subclause 2(1) of Schedule 1.

***primary price***: see subclause 17(3) of Schedule 1.

***primary stage*** means the clock rounds of the auction:

1. commencing with the first clock round; and
2. ending immediately after the auction manager provides the results for the final clock round in accordance with clauses 18 and 19 of Schedule 1.

***primary winner***: see subclause 17(1) of Schedule 1.

***product***: see subsection 5(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*.

***re-allocation declarations*** means:

1. the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018*;
2. the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Perth) Declaration 2018*;
3. the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Regional Australia) Declaration 2018*.

***register*** means the register of bidders maintained by the ACMA under section 40.

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

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

(a) a director or secretary of the applicant or bidder;

(b) an employee of the applicant or bidder;

(c) an employee of a related body corporate that provides services to the applicant or bidder.

***residual lot***: see subclause 1(1) of Schedule 2.

***roaming services agreement*** means an agreement between two or more carriers for the principal purpose of enabling the supply of public mobile telecommunications services by one of those other carriers, in geographic locations where another of those carrier’s public mobile telecommunications services are not available.

***round***: for the secondary stage, see subclause 2(1) of Schedule 2.

***secondary price***: see subclause 17(3) of Schedule 2.

***secondary stage*** means the rounds of the auction:

(a) commencing with the first round for a residual lot of a product; and

(b) ending immediately after the auction manager provides the results for the final round of the secondary stage in accordance with clauses 18 and 19 of Schedule 2.

***secondary winner***: see subclauses 14(4) and 15(2) of Schedule 2.

***size***: see subsection 5(2).

***specified group of persons***: see subsections 13(3) and 13(4).

***spectrum licence limits direction*** means the *Radiocommunications (Spectrum Licence Limits*—*3.6 GHz Band) Direction 2018*.

***start demand***: see subclause 2(1) of Schedule 1.

***starting price***, for a lot of a product, means the amount set by the ACMA for the lots of the product under paragraph 28(1)(d).

***total assignment price***: see subclause 8(8) of Schedule 3.

***winning bidder*** means a primary winner or secondary winner who has frequency ranges assigned to lots of a product, allocated to them in the primary stage or secondary stage, at the end of the assignment stage.

***winning price***: see subsection 63(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 expressions used in this instrument are defined in the Act, including the following:

* ACCC
* ACMA
* apparatus licence
* frequency band
* licence
* radiocommunications device
* spectrum
* 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, a reference to a part of the spectrum, a frequency band or a frequency range includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

Note: This means the lower number in the reference to a part of the spectrum, a frequency band or a frequency range is not included in the part of the spectrum, the frequency band or the frequency range.

(3) In this instrument, a reference to time is a reference to the legal time in the Australian Capital Territory.

## 5 Lots and products

(1) In this instrument:

***lot*** means a unit of a product that is available in the auction.

***Perth area*** means the named area set out in the table in subsection 5(3) of the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Perth) Declaration 2018*.

***Perth combined products*** means the Perth lower band product and Perth upper band product.

***Perth lower band product*** means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency range 3575 MHz to 3655 MHz in the Perth area.

Note: See the table item dealing with 3.6 GHz PERTH LOWER in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with PERT01 in Table 1 set out in Schedule 2 to the marketing plan.

***Perth upper band product*** means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency range 3655 MHz to 3700 MHz in the Perth area.

Note:See the table item dealing with 3.6 GHz PERTH UPPER in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with PERT02 in Table 1 set out in Schedule 2 to the marketing plan.

***product*** means a part of the spectrum identified as a product in the marketing plan, characterised by a frequency range and a geographic area.

Note: The marketing plan places each product into a category, with the category defining the frequency range. See Schedule 1 and Schedule 2 to the marketing plan.

(2) The ***size*** of each lot of a product, when expressed in MHz, is the lot size set out for the product in the marketing plan, and the ***size*** or ***total size*** of lots of a product, when expressed in MHz, is the total size of those lots.

## 6 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.

## 7 Giving documents to the ACMA

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

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

Note: Subsections 29(6), 35(8) and 38(9) have additional requirements for a deed of financial security given by email or fax.

(2) If a document is emailed:

1. the document must be included as an attachment; and
2. the document must be:
3. if the document is a statutory declaration, statement under section 58 or deed – in PDF format or another format approved by the auction manager; or
4. if the document is not a statutory declaration, statement under section 58 or deed – 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:

1. the sender’s name, postal address, telephone number and fax number; and
2. the number of pages transmitted, including the cover sheet.

(4) If the faxed document is a completed application form, completed eligibility nomination form, a statutory declaration, a statement under section 58 or a deed, the cover sheet must also state the type of document.

## 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.

## 9 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:

1. Bank—ANZ Bank;
2. Branch—Belconnen;
3. BSB number—012-951;
4. Account number—8379 24272;
5. Account name—ACMA Official Administered Receipts.

(4) An amount is taken to have been paid by a deadline specified in this instrument if:

1. the ACMA receives a bank cheque for the full amount on or before the deadline; or
2. both:
3. 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
4. the amount is received in the ACMA’s bank account no later than 3 working days after the deadline; or
5. 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 due 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 due.

Note:The effect of subsection (5) 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.

Note:Subsections (4), (5) and (6) relate to Division 2 of Part 6 to the extent that they apply to spectrum access charges payable under section 294 of the Act.

# Part 2—Limits on allocation of spectrum

Division 1 Allocation limits

## 10 Interpretation

In this Division:

***associated area***, for a location, has the meaning given in subsection 6(3) of the spectrum licence limits direction.

***designated area*** means a metropolitan area or a regional area.

***Hierarchical Cell Identification Scheme*** or ***HCIS*** means the Hierarchical Cell Identification Scheme used as part of the Australian Spectrum Map Grid 2012 document published by the ACMA on its website, as the document existed at the time the spectrum licence limits direction was made.

Note 1: The HCIS is a naming convention for areas on the Australian Spectrum Map Grid 2012 (ASMG), which is a system used by the ACMA to define geographic areas for radiocommunications licensing. A document describing the ASMG and HCIS, as well as spatial datasets describing each HCIS area could, at the time the spectrum licence limits direction was made, be found on the ACMA’s website (www.acma.gov.au).

Note 2: A tool to convert lists of HCIS area descriptions into Placemark files to allow the areas to be visualised using computer mapping software could, at the time the spectrum licence limits direction was made, be found on the ACMA’s website (www.acma.gov.au).

***insignificant***: see subsection 12(4).

***metropolitan area*** has the meaning given in subsection 6(1) of the spectrum licence limits direction.

***part of the regional area***: see subsection 12(5).

***PMTS Class B*** has the meaning given in the *Radiocommunications (Interpretation) Determination 2015*.

***PTS licence*** has the meaning given in the *Radiocommunications (Interpretation) Determination 2015*.

***regional area*** has the meaning given in subsection 6(2) of the spectrum licence limits direction.

***relevant band*** means the part of the spectrum from 3400 MHz to 3700 MHz.

***relevant re-allocation declaration*** means any of the following:

1. the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018*;
2. the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Perth) Declaration 2018*;
3. the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Regional Australia) Declaration 2018*.

***use***, in relation to a part of the spectrum, includes use by operating a radiocommunications device in accordance with a PTS licence for a PMTS Class B service, but does not include the operation of a radiocommunications device in accordance with any other apparatus licence.

## 11 Meaning of *allocation limits*

(1) In this instrument, a reference to the ***allocation limits*** is a reference to the requirement that the allocation of spectrum licences under this instrument in the 3.6 GHz band must not result in a person or specified group of persons having permission to use more spectrum in relation to the relevant band in each designated area than a limit set out in section 12.

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 from 3400 MHz to 3700 MHz that may be used by a person or specified group of persons as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act in the 3.6 GHz band. See the spectrum licence limits direction.

(2) In this instrument, for the purposes of assessing the application of the allocation limits to a product, the Perth combined products are to be treated as a single product.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products.

## 12 Allocation limits

(1) Subject to subsections (2), (3), (4) and (5), no person or specified group of persons may, as a result of the allocation of a spectrum licence under this instrument, use:

1. more than an aggregate of 60 MHz of the relevant band in each metropolitan area (whether or not at the same location in that metropolitan area);
2. more than an aggregate of 80 MHz of the relevant band in each regional area (whether or not at the same location in that regional area).

(2) Where, immediately prior to any allocation of a spectrum licence under this instrument:

1. a person or specified group of persons is entitled to use one or more parts of the spectrum in the relevant band in a designated area; and
2. the aggregate of those parts of the spectrum is not, when expressed in MHz, a whole number that is a multiple of 5;

subsection (1) is to apply in relation to the designated area as though that number were rounded down to the nearest whole number that is, when expressed in MHz, a multiple of 5.

(3) Where, immediately prior to any allocation of a spectrum licence under this instrument:

1. a person or specified group of persons is entitled to use a part of the spectrum in the relevant band within one or more parts of a regional area (but not the entire regional area); and
2. the aggregate population of those parts of the regional area is insignificant;
3. subsection (1) is to apply as though the person or specified group of persons is not entitled to use that part of the spectrum in those parts of the regional area.

(4) For the purposes of subsection (3), the aggregate population of one or more parts of a regional area referred to in that subsection is ***insignificant*** if, and only if, the aggregate population of those parts of the regional area is less than 15% of the total population of that regional area determined in accordance with the HCIS – List of Population Data document published by the ACMA on its website, as that document existed at the time the spectrum licence limits direction was made.

Note: The HCIS – List of Population Data document is a document published by the ACMA which identifies each Australian Spectrum Map Grid 2012 (ASMG) cell and block by its HCIS identifier and lists the corresponding population based on Census data. The HCIS is a naming convention for areas on the ASMG, which is a system used by the ACMA to define geographic areas for radiocommunications licensing. The document could, at the time the spectrum licence limits direction was made, be found on the ACMA’s website (www.acma.gov.au).

(5) For the purposes of subsection (3), to the extent that a licence entitles a person to use a part of the spectrum in the relevant band at one or more specified locations, the ***part of the regional area*** for each location is so much of the associated area for the location as is within the regional area.

Note 1: For ***associated area***, see subsection 6(3) of the spectrum licence limits direction.

Note 2: This subsection does not affect the meaning of the expression part of the regional area in relation to a licence to the extent that it entitles a person to use a part of the spectrum in the relevant band within a specified area (rather than at a specified location).

Division 2 Associates, specified group of persons and affiliations

## 13 Meaning of *associate* and *specified group of persons*

(1) In this instrument:

***associate*** means:

1. in relation to a person that is a body corporate:
2. a director or secretary of the body; or
3. a related body corporate; or
4. a director or secretary of a related body corporate; or
5. an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or
6. in relation to a person that is an individual:
7. the individual’s spouse; or
8. the individual’s de facto partner within the meaning of the *Acts Interpretation Act 1901*; or
9. 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
10. a body corporate of which the individual is a director or secretary; or
11. a body corporate that is a related body corporate in relation to a body corporate of which the individual is a director or secretary; or
12. in relation to any person (the ***first person***) – any other person (other than the Commonwealth when represented by the ACMA) who is party to a relevant agreement with the first person that either or both:
13. is for the use by one party to the agreement of spectrum licensed to another party to the agreement under a spectrum licence for a part of the spectrum referred to in a relevant re-allocation declaration;
14. relates to the acquisition of a spectrum licence for a part of the spectrum referred to in a relevant re-allocation declaration.

Note: The spectrum referred to in the relevant re-allocation declarationsis the frequency band 3575 MHz to 3700 MHz.

(2) For paragraph (1)(c) of the definition of ***associate***,a ***relevant agreement*** means an agreement, arrangement or understanding:

1. whether formal or informal, or partly formal and partly informal; and
2. whether written or oral, or partly written and partly oral; and
3. 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*.

(3) In this instrument:

***specified group of persons*** means either of the following:

1. a person and all associates of that person;
2. subject to subsection (4) – any 2 or more groups referred to in paragraph (a) that have at least one member in common.

(4) For paragraph (b) of the definition of ***specified group of persons*** in subsection (3), an individual is taken not to be a member in common between 2 or more groups that are comprised of a person (the ***relevant person***) and the associates of that relevant person where all of the following apply:

1. the individual is providing services as a company secretary of one or more related bodies corporate of the relevant person in each of the groups;
2. the individual is not providing those services as an employee of or direct contractor to any of those related bodies corporate, but as an employee of or contractor to a person that:
3. is not in any of the groups; and
4. has been engaged by each of those related bodies corporate, under a contract or other legally binding arrangement, to provide the services of a company secretary;
5. the individual is not a director of any of those relevant persons or related bodies corporate;
6. each of those related bodies corporate is incorporated outside Australia.

## 14 Affiliation between applicants or bidders

Two applicants or bidders are ***affiliated*** if the applicants or bidders are in the same specified group of persons.

Note:Paragraph (b) of the definition of ***specified group of persons*** in subsection 13(3) means that 2 applicants or bidders are affiliated if they have an associate in common. However, see subsection 13(4).

## 15 Affiliation between applicant or bidder and existing relevant band licensee

An applicant or bidder is ***affiliated*** with an existing relevant band licensee if the applicant or bidder and the existing relevant band licensee are in the same specified group of persons.

Note 1: Paragraph (b) of the definition of ***specified group of persons*** in subsection 13(3) means that an applicant or bidder is affiliated with an existing relevant band licensee if the applicant or bidder and the existing relevant band licensee have an associate in common. However, see subsection 13(4).

Note 2: An existing relevant band licensee may also be an applicant or bidder.

## 16 Information relevant to considering whether applicants, bidders or existing relevant band licensees are affiliated

(1) When considering under this instrument:

1. whether 2 or more applicants or bidders are affiliated; or
2. whether one or more applicants or bidders are affiliated with one or more existing relevant band licensees;

the ACMA must have regard to:

1. completed application forms given under paragraph 29(1)(a) or paragraph 35(2)(a); and
2. statutory declarations and statements made under this instrument.

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

# Part 3—Confidentiality

## 17 Meaning of *confidential information*

In this instrument:

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

1. documents the applicant or bidder has given to the ACMA for the purposes of the auction; and
2. information provided to the bidder under section 41 for the purpose of participating in the auction; and
3. a start demand of the bidder for a clock round of the primary stage; and
4. a posted demand of the bidder for a clock round of the primary stage; and
5. a bid made by the bidder in the auction; and
6. a proposed bid by the applicant or bidder or a bid under consideration by the applicant or bidder; and
7. a proposed start demand by the applicant or bidder for the first clock round of the primary stage or a proposed start demand under consideration by the applicant or bidder for the first clock round of the primary stage; and
8. the applicant’s or bidder’s bidding strategy; and
9. the amount the applicant or bidder is willing to pay for:
10. a lot or combination of lots; or
11. a part or parts of the spectrum; and
12. information that, if disclosed, could be reasonably expected to affect or be capable of affecting:
13. bids made or proposed to be made by another applicant or bidder; or
14. start demands for the first clock round of the primary stage or proposed start demands for the first clock round of the primary stage by another applicant or bidder; or
15. another applicant’s or bidder’s bidding strategy; and
16. information that, if disclosed, could be reasonably expected to affect, or be capable of affecting, the outcome of the auction.

## 18 Obligation to not disclose confidential information

(1) An applicant or bidder, or a related person who has knowledge of the applicant’s or bidder’s confidential information, or a contractor of an applicant or bidder 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 auction to any person.

(2) Subsection (1) does not prohibit an applicant or bidder, or a related person of an applicant or bidder, or a contractor of an applicant or bidder, disclosing information about the auction:

1. for the purpose of obtaining advice relating to the auction from a person in the person’s professional capacity; or
2. for the purpose of obtaining finance to make a payment in relation to spectrum licences in the auction; or
3. to the ACMA; or
4. for an applicant or bidder – to a related person of that applicant or bidder; or
5. 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
6. for a contractor of an applicant or bidder – to that applicant or bidder, or to a related person of the same applicant or bidder; or
7. 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 or contractor who is required to give a deed of confidentiality to the ACMA, see section 22.

(3) Subsection (1) does not prohibit an applicant or bidder, or a related person of an applicant or bidder, or contractor of an applicant or bidder, disclosing information about the auction if:

1. the information is already publicly available; and
2. the information was not made available because of a breach of this section.

## 19 Duration of confidentiality obligation

Section 18 applies to an applicant or bidder, a related person of the applicant or bidder, and contractor of the applicant or bidder until:

1. the bidder is notified under section 56 that the bidder is not a winning bidder; or
2. the applicant, as a withdrawn applicant, is notified under section 57 that the applicant’s confidentiality obligation is at an end; or
3. the bidder, as a winning bidder, makes a statement under section 58.

## 20 Reporting breach of confidentiality

An applicant or bidder, or related person of an applicant or bidder, or contractor of an applicant or bidder, who discloses confidential information in breach of section 18 or who receives the confidential information of another applicant or bidder must report the disclosure or receipt in writing to the ACMA as soon as possible, but no later than 2 working days after becoming aware the disclosure or receipt has occurred.

## 21 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, or a contractor of the applicant or bidder, may have disclosed confidential information in breach of section 18 or received confidential information as a result of a breach of section 18, the ACMA must:

1. tell the applicant or bidder, giving details of the matter; and
2. ask the applicant or bidder to make submissions about the matter; and
3. 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 the end of the auction period, the ACMA is not required to tell the applicant or bidder before the auction period ends, but must tell the applicant or bidder as soon as practicable after the auction period ends.

## 22 Deed of confidentiality required from related persons and contractors

(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:

1. an employee of the applicant or bidder; or
2. an employee of a related body corporate of the applicant or bidder that provides services to the applicant or bidder.

(2) A contractor 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.

(3) Subsection (2) does not apply to a contractor under a contract:

1. for the purpose of obtaining advice relating to the auction from a person in the person’s professional capacity; or
2. for the purpose of obtaining finance to make a payment in relation to spectrum licences in the auction.

(4) If a person mentioned in paragraph (1)(a) or (1)(b) or subsection (2) 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 paragraphs 26(1)(h) and 27(1)(h).

# Part 4—Procedures before auction

Division 1 Preliminary

## 23 Auction manager

The ACMA must, in writing, appoint:

1. a member within the meaning given by the *Australian Communications and Media Authority Act 2005*; or
2. a member of the ACMA staff; or
3. 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 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 or bidder withdraws, or is taken to withdraw, from the auction, or is not permitted to make a bid in the auction.

Division 2 Advertising auction

## 26 Advertising of auction by the ACMA

(1) The ACMA must publish on its website a notice that:

1. describes the parts of the spectrum to be auctioned; and
2. gives a brief description of the way the auction will be conducted; and
3. states that the auction will be conducted in accordance with this instrument; and
4. invites persons to apply to the ACMA to take part in the auction; and
5. states the date and time (the ***application deadline***) before which:
6. completed application forms, completed deeds of acknowledgement and completed deeds of confidentiality by applicants must be received by the ACMA; and
7. the application fee must be paid to the ACMA on behalf of the Commonwealth; and
8. states the date and time (the ***eligibility deadline***) before which:
9. completed eligibility nomination forms must be received by the ACMA; and
10. eligibility payments must be made to the ACMA on behalf of the Commonwealth, or deeds of financial security must be given to the ACMA on behalf of the Commonwealth, or a combination of both; and
11. states that applications may only be withdrawn before the eligibility deadline; and
12. states that the applicant information package for the auction 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.

## 27 Applicant information package

(1) The applicant information package must contain the following information:

1. the re-allocation declarations;
2. the spectrum licence limits direction;
3. the marketing plan;
4. this instrument;
5. a guide to the auction;
6. an application form approved by the ACMA, with instructions for completing and giving the application form to the ACMA;
7. a deed of acknowledgement 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;
8. a deed of confidentiality form approved by the ACMA, that includes a statement that an applicant, or related person of an applicant, or contractor of an applicant, agrees not to disclose confidential information before section 18 ceases to apply to the relevant applicant or related person or contractor;
9. the amount of the application fee for the auction;
10. the application deadline;
11. statutory declaration forms and the form for a statement under section 58 for the purposes of this instrument;
12. an eligibility nomination form approved by the ACMA, with instructions for completing and giving the eligibility nomination form to the ACMA;
13. a deed of financial security form approved by the ACMA;
14. information about making an eligibility payment, or giving a deed of financial security, or both making an eligibility payment and giving a deed of financial security, for securing initial eligibility points;
15. the eligibility deadline;
16. advice that the eligibility deadline is the last time for withdrawal from the auction;
17. the physical address for giving documents to the ACMA;
18. the email address for giving documents to the ACMA;
19. the fax number for giving documents to the ACMA.

(2) The applicant information package may also contain other information about the auction.

(3) The ACMA must publish the applicant information package on its website as soon as practicable after notice of the auction is published under subsection 26(1).

(4) If the ACMA makes any change to the contents of the applicant information package after it is published, the ACMA must publish a notice giving details of the change on its website.

## 28 Value of initial eligibility points, lot ratings, minimum spectrum requirements and starting prices

(1) The ACMA must set the following amounts:

1. the dollar value of each initial eligibility point for the primary stage of the auction;
2. the lot rating for the lots of each product in the auction;
3. the options for the minimum spectrum requirement, in lots, that an applicant may select for lots of a product in the auction;
4. the starting price for the lots of each product in the auction.

Note:Paragraph (d) relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

(2) After setting the amounts mentioned in paragraphs (1)(a), (1)(b), (1)(c) and (1)(d), the ACMA must approve an application form and eligibility nomination form.

(3) The ACMA must ensure that the eligibility nomination form includes a requirement for and a guide to:

1. specifying the number of lots of each product wanted by an applicant as the start demands of the applicant for the first clock round of the primary stage, at the starting price for the lots of the product; and
2. calculating and specifying the initial eligibility points of an applicant based on the specified start demands of the applicant; and
3. in relation to each product, either:

(i) not selecting a minimum spectrum requirement; or

(ii) selecting only one option as the minimum spectrum requirement;

for the lots of each product.

(4) The ACMA must publish the amounts set under subsection (1) and the application form and eligibility nomination form on its website as soon as practicable after notice of the auction is published under subsection 26(1).

Division 3 Application to participate in auction

## 29 Making an application

(1) A person may apply to become registered as a bidder in the auction by:

1. giving the ACMA a completed application form; and
2. giving the ACMA a deed of acknowledgement executed by the applicant; and
3. giving the ACMA a deed of confidentiality executed by the applicant; and
4. paying the application fee;

before the application deadline.

Note: For information on how an application fee must be paid, see section 9.

(2) After the application deadline and no later than the eligibility deadline, an applicant must:

1. give the ACMA a completed eligibility nomination form, which:
2. specifies the number of lots of each product wanted by the applicant as valid start demands of the applicant for the first clock round of the primary stage, at the starting price for the lots of the product; and
3. specifies the initial eligibility points of the applicant, based on those specified start demands; and
4. in relation to each product, either does not select a minimum spectrum requirement, or selects only one option as the minimum spectrum requirement, for the lots of each product; and
5. in accordance with section 38, do one of the following:
6. make an eligibility payment of an amount to the ACMA on behalf of the Commonwealth; or
7. give the ACMA on behalf of the Commonwealth a deed of financial security, for an amount; or
8. make an eligibility payment of part of an amount and give a deed of financial security for the remainder.

Note: For information on how an eligibility payment is made, see section 9. For information on how a deed of financial security is given, see section 7 and subsections 38(7), 38(8) and 38(9).

(3) For paragraph (2)(b), ***amount***, in relation to a person, has the meaning given by subsection 38(2).

(4) If, before the eligibility deadline, an applicant has not:

1. given the ACMA a completed eligibility nomination form; and
2. made an eligibility payment to the ACMA on behalf of the Commonwealth, or given a deed of financial security to the ACMA on behalf of the Commonwealth, or a combination of both;

in accordance with subsection (2), the applicant is taken to have withdrawn its application.

(5) An applicant may give the ACMA an updated document:

1. for paragraph (1)(a), (1)(b) or (1)(c) – at any time until the application deadline, but not after the application deadline; or
2. for paragraph (2)(a), or subparagraph (2)(b)(ii) or (2)(b)(iii) – at any time until the eligibility deadline, but not after the eligibility deadline.

(6) If a deed of financial security (for subparagraph (2)(b)(ii) or (2)(b)(iii)) is given to the ACMA on behalf of the Commonwealth by email or fax before the eligibility deadline the original deed must be received by the ACMA no later than 3 working days after the eligibility deadline (or, if the ACMA agrees to a later time, the agreed time) for the application to be valid.

## 30 Start demand validity rules for application

(1) For the purposes of subparagraph 29(2)(a)(i), a start demand of an applicant for lots of a product is valid if both of the following apply in relation to the start demand:

1. the total size of the lots of the product for the start demand does not exceed the applicant’s allocation limits (when expressed in MHz):

(i) applicable to the product, other than the Perth lower band product and the Perth upper band product; or

(ii) applicable to the Perth combined products; and

1. the number of lots for the applicant’s start demand of the product is not greater than the number of lots for the supply of the product.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

(2) In subsection (1), ***supply*** has the meaning given by subclause 2(1) of Schedule 1.

## 31 Applicants to notify ACMA if application information incorrect

(1) 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.

(2) The auction manager may correct the information in the application if the auction manager is satisfied that the information is incorrect, such as it containing a clerical error or an obvious mistake or omission.

## 32 Applicant to make statutory declaration

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

1. give each applicant details about the identity of all other applicants, and the persons identified as the associates of other applicants; and
2. give each applicant details about the identity of all existing relevant band licensees, other than an existing relevant band licensee who is either an applicant or identified as an associate of an applicant; and
3. ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant or with an existing relevant band licensee and, if so, identifying the other applicant or existing relevant band licensee and giving details of the affiliation.

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

## 33 Failure to give statutory declaration

If an applicant does not give the ACMA a statutory declaration in accordance with section 32, the applicant is taken to have withdrawn its application.

## 34 Procedure if ACMA satisfied applicants affiliated

(1) If the ACMA is satisfied that two or more applicants are affiliated, the ACMA must, in writing:

1. notify the applicants and tell them the basis on which the ACMA is satisfied the applicants are affiliated; and
2. notify the affiliated applicants that to participate in the auction they must:
3. withdraw the applications of all the affiliated applicants and submit a new application under section 35; or
4. withdraw the applications of all but one of the affiliated applicants.

(2) Within 10 working days of the ACMA notifying the affiliated applicants under subsection (1), the applicants must notify the ACMA in writing which option under paragraph (1)(b) the applicants have decided to take.

(3) If the affiliated applicants do not notify the ACMA within those 10 working days, the applicants are taken to have withdrawn their applications.

(4) If some of the affiliated applicants withdraw their applications, but more than one affiliated applicant does not, the remaining affiliated applicants are taken to have withdrawn their applications.

(5) The ACMA must tell the applicants in writing if they are taken to have withdrawn under subsection (3) or (4).

## 35 Requirements for new application

(1) If a group of affiliated applicants notified by the ACMA under subsection 34(1) decide to submit a new application, the new applicant must be a body corporate whose only members are one or more of those affiliated applicants.

(2) The new applicant must, within 10 working days of the ACMA notifying the affiliated applicants under subsection 34(1):

(a) give the ACMA a completed application form; and

(b) pay the application fee.

Note: For information on how an application fee must be paid, see section 9.

(3) If the ACMA receives a completed application form and application fee under subsection (2), the ACMA must give each applicant (including the new applicant) updated details about the identity of all other applicants and the persons identified as the associates of other applicants.

(4) The updated information does not need to include those applicants who have already withdrawn.

(5) The new applicant must, no later than 3 working days after the ACMA gives the new applicant the updated information (or, if the ACMA agrees to a later time, the agreed time):

1. give the ACMA a deed of acknowledgement executed by the applicant; and
2. give the ACMA a deed of confidentiality executed by the applicant; and
3. make and give the ACMA a statutory declaration that the new applicant is not affiliated with any other applicant in the updated list and stating whether the new applicant is affiliated with an existing relevant band licensee.

(6) The new applicant must, no later than the eligibility deadline (or, if the ACMA agrees to a later time, the agreed time):

1. give the ACMA a completed eligibility nomination form, which includes the matters set out in paragraph 29(2)(a); and
2. in accordance with section 38, do one of the following:
3. make an eligibility payment of an amount to the ACMA on behalf of the Commonwealth; or
4. give the ACMA on behalf of the Commonwealth a deed of financial security, for an amount; or
5. make an eligibility payment of part of an amount and give a deed of financial security for the remainder.

Note: For information on how an eligibility payment is made, see section 9. For information on how a deed of financial security is given, see section 7 and subsections 38(7), 38(8) and 38(9).

(7) For paragraph (6)(b), ***amount***, in relation to a person, has the meaning given by subsection 38(2).

(8) If a deed of financial security (for subparagraph (6)(b)(ii) or (6)(b)(iii)) is given to the ACMA on behalf of the Commonwealth by email or fax before the eligibility deadline, the original deed must be received by the ACMA no later than 3 working days after the eligibility deadline (or, if the ACMA agrees to a later time, the agreed time) for the application to be valid.

(9) The ACMA must not accept a new application under this section unless it is satisfied that the new applicant is not affiliated with any applicant who has not withdrawn, including another new applicant.

## 36 Procedure if ACMA satisfied applicant affiliated with existing relevant band licensee

(1) If the ACMA is satisfied that an applicant is affiliated with an existing relevant band licensee, the ACMA must, in writing, notify the applicant and tell it the basis on which the ACMA is satisfied the applicant is affiliated with the existing relevant band licensee.

(2) If the ACMA is satisfied that an applicant is affiliated with an existing relevant band licensee:

1. for each product where, if the applicant were issued spectrum licences for the number of lots of the applicant’s start demand of the product, the applicant’s allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product), or applicable to the Perth combined products, would be exceeded – the applicant’s start demand for the lots of the product is reduced by the number of lots necessary to ensure that the start demand does not exceed the applicant’s allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products; and
2. if, in accordance with paragraph (a), the number of lots of the applicant’s start demands are reduced to zero for all products – the applicant is taken to have withdrawn its application.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

(3) The ACMA must tell an applicant in writing if the number of lots of its start demand of a product is reduced under paragraph (2)(a), unless subsection (4) applies.

(4) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under paragraph (2)(b).

(5) If section 34 applies to two or more applicants, the ACMA must not make a decision under subsection (1) in relation to any of those applicants until the procedures in section 34 and, if applicable, section 35 have been completed in relation to those applicants.

Division 4 Initial eligibility points, minimum spectrum requirements and financial security

## 37 Initial eligibility points and selecting minimum spectrum requirements

(1) Subject to subsection (3), the maximum number of initial eligibility points that an applicant may specify in its completed eligibility nomination form is the sum of the lot ratings for the number of lots of each product, up to the applicant’s allocation limits (when expressed in eligibility points):

(a) applicable to the product, other than the Perth lower band product and the Perth upper band product; or

(b) applicable to the Perth combined products;

to be auctioned.

Note 1: A person’s ability to use eligibility points in the auction is restricted by the allocation limits in sections 11 and 12.

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

(2) The minimum spectrum requirements for the lots of each product to be auctioned that an applicant may select in its completed eligibility nomination form must be from the options set by the ACMA under paragraph 28(1)(c). If a selection is not made for a product, the applicant is taken to have no minimum spectrum requirement for the lots of that product.

Note:An applicant may select a minimum spectrum requirement for any product, even if the applicant has not specified a start demand for the lots of a product for the first clock round of the primary stage in its eligibility nomination form.

(3) If:

1. an applicant’s start demand for lots of one or more products is reduced in accordance with subsection 36(2); and
2. the applicant specified, in its completed eligibility nomination form, initial eligibility points that are greater than the sum of the lot ratings for the number of lots of each product for which the applicant has a start demand, after the process in subsection 36(2) is completed;

then:

1. the applicant’s initial eligibility points are reduced to the sum of the lot ratings for the number of lots of each product for which the applicant has a start demand, after the process in subsection 36(2) is completed; and
2. this reduction does not affect the amount calculated in accordance with subsection 38(2).

## 38 Eligibility payment or deed of financial security required for initial eligibility points

(1) An applicant must, before the eligibility deadline, secure initial eligibility points by:

1. making an eligibility payment of an amount to the ACMA on behalf of the Commonwealth; or
2. giving the ACMA on behalf of the Commonwealth a deed of financial security, which has been completed in the approved form and executed, for an amount; or
3. making an eligibility payment of part of an amount and giving a deed of financial security for the remainder.

Note: For information on how an eligibility payment is made, see section 9. For information on how a deed of financial security is given, see section 7 and subsections (7), (8) and (9).

(2) The ***amount*** required to secure the initial eligibility points specified by the applicant in its completed eligibility nomination form is calculated by multiplying the specified number of initial eligibility points by the dollar value of initial eligibility points set by the ACMA under paragraph 28(1)(a).

(3) If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount less than the amount under subsection (2), the ACMA must, in writing, notify the applicant that:

1. the applicant has made an eligibility payment or given a deed of financial security (or both), whichever the case may be, for less than the amount under subsection (2); and
2. the applicant must, before the eligibility deadline or no later than 3 working days after the date of the notice (whichever is the later), make an eligibility payment or give a deed of financial security (or both) for the remainder of the amount under subsection (2).

(4) If the applicant does not comply with the notice given under subsection (3):

1. subject to paragraph (c), the number of initial eligibility points secured by the applicant is calculated by dividing the amount paid or secured by deed by the dollar value of initial eligibility points set by the ACMA under paragraph 28(1)(a), and rounding down to the nearest whole point or zero if there is no remaining whole point; and
2. the start demands of the applicant are reduced commencing with a lot or lots of a product with the lowest lot rating being removed from the applicant’s start demands until the sum of the lot ratings for the remaining start demands of the applicant is not greater than the initial eligibility points secured by the applicant calculated under paragraph (a); and
3. if, after the steps in paragraphs (a) and (b) are taken, the difference between:
4. the initial eligibility points secured by the applicant (the ***provisional secured points***); and
5. the sum of the lot ratings for the number of lots of each product for which the applicant has a start demand;

is greater than zero – that difference is subtracted from the provisional secured points to give the number of initial eligibility points secured by the applicant.

(5) If:

1. no initial eligibility points, in accordance with paragraph (4)(a) or (4)(c), remain; or
2. no start demands, in accordance with paragraph (4)(b), remain:

the applicant is taken to have withdrawn its application.

(6) The ACMA must tell an applicant in writing if:

1. the applicant has had its initial eligibility points and start demands calculated in accordance with subsection (4); or

the applicant is taken to have withdrawn its application under subsection (5).

(7) A deed of financial security must be executed by:

1. an authorised deposit-taking institution within the meaning given by the *Banking Act 1959*; or
2. a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*; or
3. a Lloyd’s underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*.

(8) 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.

(9) If a deed of financial security is given to the ACMA on behalf of the Commonwealth by email or fax before the eligibility deadline, the original deed must be received by the ACMA no later than 3 working days after the eligibility 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 on behalf of the Commonwealth.

(10) An applicant is taken to have withdrawn its application if:

1. the applicant fails to make an eligibility payment or give a deed of financial security before the eligibility deadline; or
2. the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in subsection (7).

(11) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (10).

Division 5 Withdrawal of applicant

## 39 Withdrawal of applicant

(1) An applicant may withdraw its application before the eligibility 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 made an eligibility payment under subsection 29(2) or 35(6) and in accordance with section 38, the ACMA on behalf of the Commonwealth must refund the eligibility payment within the period specified in subsection 57(2).

(3) Subsection (2) is subject to sections 75 and 77.

(4) An applicant may not withdraw its application after the eligibility deadline.

(5) An applicant must not be re-admitted to the auction after withdrawing, or being taken to have withdrawn, its application.

Division 6 Registration of bidders

## 40 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:

1. the bidder’s name;
2. the bidder’s postal address;
3. the bidder’s email address;
4. the bidder’s telephone number;
5. the name, position, postal address, email address and telephone number of a contact person for the bidder;
6. the bidder’s start demands for the lots of each product for the first clock round of the primary stage;
7. the bidder’s initial eligibility points;
8. the bidder’s minimum spectrum requirements (if any) for the lots of each product;
9. the bidder’s allocation limits for the lots of the following:
   * + 1. each product, other than the Perth lower band product and the Perth upper band product;
       2. the Perth combined products.
10. the bidder’s ABN, ACN or ARBN;
11. 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 to conduct the auction.

(4) The ACMA must make changes to the register as soon as practicable after:

1. 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
2. the ACMA otherwise becomes aware that any of the information on the register is not correct.

## 41 Registration process

(1) The ACMA must register a person as a bidder in the auction if and only if:

1. the eligibility deadline has passed; and
2. the person has:
3. made a valid application under section 29 or 35; and
4. made an eligibility payment or given the ACMA on behalf of the Commonwealth a deed of financial security under section 38, or both; and
5. the person has not withdrawn, and is not taken to have withdrawn, its application; and
6. if a deed of financial security is given – the ACMA is satisfied that the person who executed the deed is a person mentioned in subsection 38(7).

(2) After the eligibility deadline, the ACMA must tell a bidder in writing that the bidder has been registered and may participate in the auction, and give the bidder the following:

1. a copy of the information recorded on the register for the bidder;
2. the ACMA’s email address and telephone and fax numbers available for use by bidders;
3. information about accessing and using the auction system;
4. any items required for access to the auction system;
5. information about how to bid by alternative methods if the bidder is unable to make 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*** under section 17.

## 42 Bidders to notify ACMA if register incorrect

(1) 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.

(2) The auction manager may correct the information on the register if the auction manager is satisfied that the information is incorrect, such as it containing a clerical error or an obvious mistake or omission.

**Division 7 Preparation for bidding and scheduling rounds of the auction**

## 43 Preparation for bidding

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

## 44 Security of auction

(1) A bidder must ensure that any information and 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 information or item provided to the bidder for the purpose of accessing the auction system is lost or stolen during the auction period.

## 45 Auction rounds

(1) The rounds of the auction for the primary stage, secondary stage and assignment stage are to be scheduled.

(2) The first clock round of the primary stage of the auction starts on the date and time for that clock round set by the auction manager under subsection 46(1).

## 46 First and second clock rounds

(1) After the eligibility deadline, the auction manager must set the start date and start time of the first and second clock rounds of the primary stage of the auction.

(2) The auction manager must notify bidders of the start date and start time of the first and second clock rounds of the primary stage at least 10 working days before the start date of the first clock round.

# Part 5—Auction procedures

Division 1 Procedures to be applied

## 47 Auction stages

(1) The auction consists of a primary stage, a secondary stage (if required) and an assignment stage.

(2) The primary stage is made up of:

1. the bidder’s start demands for the lots of each product for the first clock round; and
2. one or more clock rounds for the making of bids on lots of a product and the results of that clock round; and
3. the determination of the final posted demands as a result of the final clock round for the lots of each product allocated to a primary winner and of the associated primary price after all clock rounds are completed.

(3) The secondary stage, if required, is made up of:

1. one or more rounds for the making of bids on any residual lot of a product that is available in the secondary stage of the auction and the results of the round; and
2. the determination of the winning final high bids for any residual lot of a product allocated to a secondary winner and of the associated secondary price after all rounds for the secondary stage are completed.

(4) The assignment stage is made up of:

1. one or more assignment rounds for the making of bids for the assignment of frequency ranges to lots of a product (or group of products) that were allocated in the primary stage or secondary stage; and
2. the determination of the winning assignment bids for the frequency ranges assigned to the lots of each product (or group of products) that were allocated to a primary winner or secondary winner and of the associated total assignment price after all assignment rounds are completed.

## 48 Procedures if only one bidder

(1) If there is only one bidder in the auction, the procedures to be applied for allocating lots of a product and assigning frequency ranges are as follows:

1. there will be one clock round in the primary stage using the auction system in which the bidder may make a bid for the lots of each product;
2. the assignment stage will be conducted as soon as possible after the primary stage to enable the bidder to indicate the frequency ranges the bidder wishes to have assigned.

Note:In this situation, the assignment prices will be zero, see subclause 8(2) of Schedule 3.

(2) The ACMA must notify the bidder as soon as reasonably practicable after the eligibility deadline that it is the only bidder, and that the procedures in this section apply.

## 49 Rounds of the auction

(1) The clock rounds for the primary stage of the auction are to be conducted in accordance with the rules in Schedule 1.

(2) The rounds for the secondary stage of the auction, if required, are to be conducted in accordance with the rules in Schedule 2.

(3) The assignment rounds for the assignment stage of the auction are to be conducted in accordance with the rules in Schedule 3.

## 50 Auction manager’s discretion to accept bids

(1) The auction manager may permit a bidder to make a bid for a round in the auction, in the primary stage or secondary stage or assignment stage, 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.

(2) The auction manager may permit a bidder to make a bid for a round in the auction, in the primary stage or secondary stage or assignment stage, 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 relevant round.

(4) The auction manager must not permit a bidder to make a bid under subsection (2) after information about the outcome of the relevant round has been given to bidders.

Note: See clause 8 of Schedule 1, clause 5 of Schedule 2 and clauses 7 and 8 of Schedule 3 for details of the information about the outcome of a round that will be given to bidders.

## 51 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:

1. make corrections to:
2. the results of the round of the auction that last ended; and
3. information received by a bidder after that round; or
4. stop the current round of the auction and restart the round; or
5. cancel the results of one or more rounds of the auction and restart the auction from the point before those rounds; or
6. cancel the results of all the rounds of the auction in the primary stage or the secondary stage or the assignment stage and restart the auction from the first round of the relevant stage; or
7. stop the auction.

(2) For this section, exceptional circumstances include:

1. a significant technical difficulty with the auction system; or
2. a breach of the confidentiality obligation in section 18.

(3) Subsection (2) does not limit what might constitute exceptional circumstances.

(4) This section applies to clock rounds in the primary stage, rounds in the secondary stage and assignment rounds in the assignment stage of the auction.

Division 2 Affiliations during auction

## 52 Affiliation between bidders during auction period not permitted

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

Note:If the ACMA is satisfied that a breach of this provision has occurred, the ACMA may take action under section 75. Section 75 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

## 53 Requirement to report affiliation

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

(2) If, at any time during the auction period, a bidder believes that it may be an affiliate of an existing relevant band licensee, the bidder must immediately tell the ACMA in writing the identity of the existing relevant band licensee and give details of the affiliation.

(3) Subsection (2) does not apply in relation to an affiliation between a bidder and an existing relevant band licensee if the ACMA gave the bidder a notice in writing in relation to the affiliation under section 36 of this instrument.

## 54 Auction continues despite possible affiliation

If the ACMA becomes aware during the auction period that two or more bidders may be affiliated, or that a bidder may be affiliated with an existing relevant band licensee, the auction is to continue and the bidders may continue to participate in the auction.

## 55 ACMA consideration of affiliation

(1) If the ACMA has reason to believe that two or more bidders are affiliated during the auction period, or that a bidder is affiliated with an existing relevant band licensee, the ACMA must, in writing, notify the bidders or bidder and tell them the basis on which the ACMA believes that the affiliation exists.

(2) If a bidder gave the ACMA information under section 53 and the ACMA does not consider that the affiliation exists, the ACMA must tell the bidder in writing that the ACMA does not consider the affiliation to exist.

# Part 6—Procedures after auction

Division 1 Confirmation of auction results

## 56 Notice and refunds to unsuccessful bidders

(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:

1. the bidder was unsuccessful in the auction; and
2. the bidder’s confidentiality obligations under section 18 have ended.

(2) If the bidder made an eligibility payment, the ACMA on behalf of the Commonwealth must refund the eligibility payment no later than 6 months after giving the notice under subsection (1) unless the ACMA has made a decision to retain the eligibility payment under section 75.

Note:Section 75 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

## 57 Notice and refunds to withdrawn applicants

(1) 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 18 have ended.

(2) If an applicant that withdrew, or was taken to have withdrawn, its application made an eligibility payment, the ACMA on behalf of the Commonwealth must refund the eligibility payment no later than 6 months after giving the notice under subsection (1) unless the ACMA has made a decision to retain the eligibility payment under section 75.

Note: Section 75 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

## 58 Winning bidder to make statement about affiliations

(1) As soon as practicable after the end of the auction period, the ACMA must:

1. give each winning bidder details about the identity of all other winning bidders and all existing relevant band licensees; and
2. ask the bidder to make a statement whether the bidder is an affiliate of another winning bidder or of an existing relevant band licensee and, if so, identifying the other bidder or existing relevant band licensee and giving details of the affiliation.

(2) The ACMA must state a deadline, at least 5 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 Act 1995*.

Note 2: Section 136.1 of the *Criminal Code* *Act 1995* also makes it an offence to make a false or misleading statement in connection with an application for a licence.

## 59 Notification that winning bidders are affiliated

If the ACMA is satisfied that two or more winning bidders have become affiliated after the auction period (but were not affiliated during the auction period), the ACMA must, in writing, notify the bidders and tell them the basis on which the ACMA is satisfied the bidders are affiliated.

## 60 Consequences of affiliation between bidders

(1) If the ACMA notifies two or more winning bidders under section 59 that it is satisfied the bidders are affiliated, the ACMA must not issue spectrum licences to the bidders that would exceed the allocation limits:

(a) applicable to a product, other than the Perth lower band product and the Perth upper band product; or

(b) applicable to the Perth combined products.

(2) If the issue of spectrum licences to the affiliated bidders for all the lots of a product the bidders were allocated at auction would exceed the allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products, the bidders may give a direction in writing to the ACMA specifying how spectrum is to be allocated between the bidders up to the allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products.

(3) The direction must be given jointly by the affiliated bidders and must be given to the ACMA within 5 working days after the bidders received notification under section 59.

(4) If the ACMA does not receive a direction within those 5 working days, the ACMA may, for any part of the spectrum where the lots of a product allocated to the affiliated bidders exceed the allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products, choose at its discretion how to allocate spectrum to each bidder up to the allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products.

(5) A frequency range can be assigned to a bidder under this section from any of the frequency ranges assigned to the lots of a product (or group of products) allocated at auction to any of the affiliated bidders.

(6) Spectrum in excess of the allocation limits:

(a) applicable to a product, other than the Perth lower band product and the Perth upper band product; or

(b) applicable to the Perth combined products;

that is not allocated under subsection (2) or (4) is taken to be unallocated.

(7) A winning bidder must pay the full balance of the winning price for all lots allocated (and frequency ranges assigned to the lots) to the bidder in the auction, despite receiving a smaller allocation as a result of this section.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

## 61 Notification that winning bidder is affiliated with existing relevant band licensee

(1) If the ACMA is satisfied that a winning bidder is affiliated with an existing relevant band licensee, the ACMA must, in writing, notify the winning bidder and tell it the basis on which the ACMA is satisfied the winning bidder is affiliated with the existing relevant band licensee.

(2) If the ACMA makes a decision under subsection (1) in relation to a winning bidder that was notified under section 59, the ACMA must not notify the winning bidder under subsection (1) until the procedures in section 60 have been completed in relation to the winning bidder.

## 62 Consequences of affiliation with existing relevant band licensee

(1) If the ACMA notifies a winning bidder under section 61 that it is satisfied the winning bidder is affiliated with an existing relevant band licensee, the ACMA must not issue spectrum licences to the winning bidder that would exceed the winning bidder’s allocation limits:

(a) applicable to a product, other than the Perth lower band product and the Perth upper band product; or

(b) applicable to the Perth combined products.

(2) If the issue of a spectrum licence to the winning bidder for all the lots of a product the winning bidder was allocated at auction would exceed the winning bidder’s allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products:

1. if the winning bidder did not receive a notice under section 59 – the winning bidder may give a direction in writing to the ACMA specifying how spectrum is to be removed from the winning bidder’s allocation of lots of the relevant product;
2. if two or more winning bidders received a notice under section 59, and each is affiliated with the existing relevant band licensee – the winning bidders may give a direction in writing to the ACMA specifying how spectrum is to be allocated between the winning bidders up to the allocation limits:

(i) applicable to the product, other than the Perth lower band product and the Perth upper band product; or

(ii) applicable to the Perth combined products.

(3) A direction under paragraph (2)(b) must be given jointly by the winning bidders.

(4) A direction under paragraph (2)(a) or 2(b) must be given to the ACMA within 5 working days after the winning bidder or winning bidders received notification under section 61.

(5) If the ACMA does not receive a direction within those 5 working days:

1. if the direction would have been given under paragraph (2)(a) – the ACMA may, for any part of the spectrum where the lots of a product allocated to the winning bidder exceeds the winning bidder’s allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products, choose at its discretion how to allocate spectrum to the winning bidder up to the winning bidder’s allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products;
2. if the direction would have been given under paragraph (2)(b) – the ACMA may, for any part of the spectrum where the lots of a product allocated to the winning bidders exceed the allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products, choose at its discretion how to allocate spectrum to each winning bidder up to the allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products.

(6) If paragraph (2)(b) applies in relation to two or more winning bidders, a frequency range can be assigned to one of those winning bidders under this section from any of the frequency ranges assigned to the lots of a product (or group of products) allocated at auction to any of the affiliated winning bidders.

(7) Spectrum in excess of the winning bidder’s allocation limits:

(a) applicable to a product, other than the Perth lower band product and the Perth upper band product; or

(b) applicable to the Perth combined products;

that is not allocated under subsection (2) or (5) is taken to be unallocated.

(8) A winning bidder must pay the full balance of the winning price for all lots allocated (and frequency ranges assigned to the lots) to the winning bidder in the auction, despite receiving a smaller allocation as a result of this section.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

Division 2 Winning prices, payment and issue of spectrum licences

Note:This Division is made under section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

## 63 Winning price and balance of winning price

(1) For a winning bidder, the ***winning price*** is the total of:

1. the primary price; and
2. the secondary price (if any); and
3. the total assignment price (if any);

for the lots allocated (and frequency ranges assigned to the lots) to the bidder in the auction.

Note:The winning price is the total spectrum access charge fixed under section 294 of the Act payable by a licensee for the issuing of spectrum licences to the licensee.

(2) For a winning bidder, the ***balance of the winning price*** is the winning price minus any eligibility payment made by the bidder under section 38.

## 64 Results of the auction

(1) After the winning bidders and winning prices are determined, the auction manager must tell each winning bidder:

1. the number of lots of each product allocated to the winning bidder;
2. the frequency ranges assigned to the lots allocated to the winning bidder; and
3. the winning price to be paid by the winning bidder for the lots allocated and frequency ranges assigned to the lots allocated.

(2) After the winning bidders and winning prices are determined, the auction manager must tell all bidders:

* 1. the number of winning bidders in the auction; and
  2. the frequency ranges for each product in relation to the lots allocated in the auction.

## 65 Sufficient eligibility payment – issue of spectrum licence without further payment

(1) If the balance of the winning price for a winning bidder is an amount less than zero:

1. the ACMA on behalf of the Commonwealth must refund the eligibility payment in excess of the winning price; and
2. the bidder is entitled to be issued a spectrum licence for each part of the spectrum assigned to the lots allocated to the bidder without further payment.

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

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

## 66 Payment of balance of winning price

(1) If the balance of the winning price for a winning bidder is an amount greater than zero, the ACMA must notify the bidder by registered mail of the balance.

(2) The balance of the winning price must be paid by the winning bidder to the ACMA on behalf of the Commonwealth no later than 20 working days after the date of the notice.

Note 1:The date of notice will be before the spectrum licences come into force.

Note 2:For information on how a balance of the winning price must be paid, see section 9.

(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 the ACMA gives a winning bidder a revised notice, the balance of the winning price must be paid no later than:

1. if the revised notice is given within 20 working days after the date of the original notice – no later than 30 working days after the date of the original notice; or
2. if the revised notice is given more than 20 working days after the date of the original notice – no later than 10 working days after the date of the revised notice.

67 Issue of spectrum licence after payment of balance of winning price

If a winning bidder pays the balance of the winning price in accordance with section 66, the bidder is entitled to be issued a spectrum licence for each part of the spectrum assigned to the lots allocated to the bidder.

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

Note 2: Sections 60 and 62 may affect the ability of the ACMA to issue a spectrum licence to a winning bidder.

## 68 Default

If a winning bidder does not pay the balance of the winning price in accordance with section 66:

* 1. the spectrum licence is not allocated to the winning bidder; and
  2. the allocation of spectrum licences under this instrument to other applicants is not affected; and
  3. section 70 applies to each lot (and associated spectrum assigned to each lot) that, but for this section, would have been included in a spectrum licence allocated to the winning bidder.

Note: See section 75 for when certain breaches of this instrument have occurred and section 79 in relation to other rights of the ACMA and the Commonwealth.

## 69 Publication of auction results

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

1. the names of winning bidders;
2. the spectrum allocated to each winning bidder;
3. the winning price paid, or to be paid, by each winning bidder.

# Part 7—Miscellaneous

## 70 Unallocated spectrum

Parts of the spectrum that are available in the auction but not allocated in the primary stage and not allocated in the secondary stage (if any) may be later made available for allocation by a procedure to be determined by the ACMA.

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

## 71 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 paragraphs 41(2)(c) and 41(2)(d).

(2) A bidder must not attempt to interfere with, disrupt or damage the auction system.

(3) A bidder must not use or attempt to use the auction system to breach a law of the Commonwealth.

## 72 ACMA may obtain information from applicants and bidders

(1) If the ACMA has reason to believe that an applicant or bidder has information or documents that are relevant to the performance of any of the ACMA’s functions or exercise of its powers under this instrument, the ACMA may, by written notice, require the applicant or bidder:

* 1. to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
  2. 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 75.

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

## 73 Use of information and documents by ACMA

(1) The ACMA may use information or documents it obtains in the performance of its functions or exercise of its powers under this instrument:

1. for the purposes of this instrument, including disclosing or publishing information or documents as provided for in this instrument; and
2. in relation to a spectrum licence to be issued, or issued, as a result of the auction.

(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.

## 74 ACMA to provide information to ACCC on request

(1) The ACCC may make a request to the ACMA for information in relation to the auction or in relation to an applicant or bidder.

(2) The ACMA must provide the requested information to the ACCC if the ACMA has the information.

(3) Without limiting subsection (1), information that the ACCC may request includes the following:

1. completed application forms and completed eligibility nomination forms;
2. deeds of confidentiality;
3. information about an applicant’s associates and affiliations (including statutory declarations and statements made under this instrument);
4. information about any breaches of confidentiality obligations;
5. information about bidding during the auction;
6. information about the outcomes of the procedures in Part 6.

## 75 Retention of eligibility payment or enforcement of deed of financial security for breach of auction procedures

(1) The ACMA on behalf of the Commonwealth may retain an eligibility payment made by an applicant or bidder, or enforce a deed of financial security given by an applicant or bidder, if:

1. the ACMA is satisfied that:
2. the applicant or bidder, or a related person of the applicant or bidder, or a contractor of the applicant or bidder, breached a provision of this instrument; and
3. the breach affected, or may have affected, the outcome of the auction; or
4. the ACMA is satisfied that the applicant or bidder, or a related person of the applicant or bidder, or a contractor of the applicant or bidder, breached the confidentiality obligation under section 18 after the auction period (but before the confidentiality obligation came to an end); or
5. the ACMA is satisfied that the bidder breached section 52; or
6. the bidder is a winning bidder who failed to give the statement required under section 58; or
7. the bidder is a winning bidder who failed to pay the balance of the winning price as required under section 66; or
8. the applicant or bidder failed to comply with a requirement in a notice given under subsection 72(1).

(2) The ACMA must, in writing, notify the applicant or bidder of a decision under subsection (1) and the nature of the breach or failure before the later of:

* + - * 1. 6 months after the end of the auction period; and
        2. 6 months after the day on which the breach or failure mentioned in subsection (1) occurred.

(3) An eligibility payment retained under this section, or an amount obtained through enforcement of a deed of financial security under this section, is forfeited to the Commonwealth unless the Federal Court orders the return of the amount under section 77.

## 76 Effect of retention on winning bidders

If the ACMA makes a decision under subsection 75(1) in relation to a winning bidder:

1. despite sections 65 and 67, the ACMA must not issue a spectrum licence to the bidder; and
2. the spectrum assigned to the lots allocated to the bidder at auction is taken to be unallocated.

## 77 Application to Federal Court for return of retained amount

(1) An applicant or bidder who has been notified by the ACMA under subsection 75(2) may, within 1 year of receiving the notice, apply to the Federal Court for return of all or part of an eligibility payment or an amount obtained through enforcement of a deed of financial security.

(2) On application, the Federal Court may:

* 1. if the Court is not satisfied that the applicant or bidder committed the breach identified in the notice given by the ACMA – order the return of all of the amount retained by the ACMA; or
  2. if the Court is satisfied that the applicant or bidder committed the breach, 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.

## 78 No liability of the ACMA, etc.

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

## 79 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.

## 80 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:

1. a member within the meaning given by the *Australian Communications and Media Authority Act 2005*; or
2. a member of the ACMA staff that:
3. holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position; or
4. is an SES employee or acting SES employee.

Note:***SES employee*** and ***acting SES employee*** are defined in the *Public Service Act 1999* and referred to in the *Acts Interpretation Act 1901*.

# Schedule 1—Rules for the primary stage of the auction

(subsections 4(1) and 49(1))

## Part 1—Application and interpretation

1 Application of Schedule

This Schedule applies to all lots of each product that are available in the primary stage of the auction.

Note: If all lots of all products are allocated in the primary stage, there is no secondary stage. See also subclause 1 of Schedule 2 as to a lot of a product that may be available in the secondary stage.

2 Interpretation

(1) In this Schedule:

***active***: see subclause 11(2).

***activity target***: see subclause 11(1).

***aggregate demand***, for lots of a product, means either:

1. before the first clock round – the total of the number of lots of the product recorded in the register as the start demands for all bidders under paragraph 40(2)(f) of this instrument; or
2. for a clock round – the total of the posted demands for the lots of the product of all bidders.

***bid***, in a clock round, means:

1. an increase bid; or
2. a decrease bid; or
3. a maintain bid.

***bid increment percentage***: see subclause 4(1).

***bid price***, for a lot of a product for a clock round, means an amount that is:

* 1. equal to or greater than the opening price; and
  2. less than or equal to the clock price.

***clock price***, for a lot of a product for a clock round, means the sum of:

1. the opening price for the lots of the product; and
2. the bid increment percentage for the lots of the product multiplied by that opening price;

rounded up to the next hundred.

***clock round*** means a round for bids in the primary stage.

***decrease bid*** means a request to decrease the start demand of a bidder for lots of a product, by entering a negative number for the demand change for the lots of the product, at a bid price.

Note: If a bidder with a start demand for the lots of a product for a clock round does not make a valid bid for the clock round, the bidder will be taken to have requested a decrease bid: see subclause 15(2).

***eligibility points***, in relation to a bidder, means the number of points the bidder may use in relation to bids on lots of each product for a clock round.

Note: For eligibility points, see clauses 11, 12 and 13.

***eligibility requirement percentage***: see subclause 4(4).

***excess demand***, for lots of a product for a clock round, means the difference between:

* 1. the aggregate demand; and
  2. the supply.

Note: The excess demand may be a positive number or a negative number or zero.

***final clock round***: see clause 16.

***increase bid*** means a request to increase the start demand of a bidder for lots of a product, by entering a positive number for the demand change for the lots of the product, at a bid price.

***maintain bid*** means a request to maintain the start demand of a bidder for lots of a product in a clock round, which:

1. at the time the bid is requested – is taken to be for any price between the opening price and the clock price for the clock round; and
2. after the processing algorithm is given effect after the clock round – is taken to be at the posted price for the lots of the product for the clock round.

Note: The actual price will be the posted price for the current clock round.

***opening price***, for a lot of a product for a clock round, means either:

1. for the first clock round – the starting price for the lots of the product; or

Note: For starting prices, see paragraph 28(1)(d) of this instrument.

1. for any clock round other than the first clock round – the posted price for the lots of the product for the previous clock round.

***posted demand***, for a bidder for lots of a product for a clock round, means:

1. for a bidder who requested an increase bid or a decrease bid for the lots of the product in the clock round – the number of lots of the product determined by the processing algorithm after the end time of the clock round;
2. for a bidder who requested a maintain bid for the lots of the product in the clock round – the start demand for the bidder for the lots of the product for that clock round.

***posted price***, for a lot of a product for a clock round, means the amount determined by the processing algorithm after the end time of the clock round, which must be:

1. equal to or greater than the opening price for the lots of the product for the clock round; and
2. less than or equal to the clock price for the lots of the product for the clock round.

Note: See subclause 2A(6).

***price point***, for a lot of a product for a clock round, means a percentage calculated as the quotient of:

1. the difference between the bid price and the opening price; and
2. the difference between the clock price and the opening price.

Note: Paragraph (a) is the numerator. Paragraph (b) is the denominator.

***primary price***: see subclause 17(3).

***primary winner***: see subclause 17(1).

***processing algorithm***: see clause 2A.

***start demand***, for a bidder for lots of a product for a clock round, means either:

1. for the first clock round – the number of lots of the product recorded in the register for the bidder under paragraph 40(2)(f) of this instrument; or
2. for any clock round other than the first clock round – the posted demand of the bidder for the lots of the product for the previous clock round.

***starting price***: see paragraph 28(1)(d) of this instrument.

***supply***, for lots of a product before the first clock round or for a clock round, means the number of lots of the product that are available in the primary stage of the auction.

Note:For the definition of ***size***, see subsection 5(2) of this instrument.

(2) In this Schedule, a reference to the total value of the lots, in eligibility points, is a reference to the sum of the lot ratings for the lots.

(3) In this Schedule, after a decrease bid is entered, a reference to the decrease bid or the number of lots for the decrease bid is a reference to the absolute value of the decrease bid or absolute value of the number of lots for the decrease bid.

Note: This means that after a negative number is entered for a decrease bid, the provisions in this Schedule use the positive value for that number.

## Part 2—Processing of bids

2A Processing algorithm

(1) In this Schedule, the processing algorithm is a method in the auction system, that is given effect immediately after the end time of a clock round, that performs the following steps:

Step 1: collects all the increase bids and decrease bids requested by bidders for lots of each product in the clock round.

Step 2: calculates the price point of each increase bid and each decrease bid.

Step 3: sorts all the increase bids and decrease bids, in ascending order, based on the price point of each bid, to form a queue of bids.

Step 4: sorts any bids in the queue with equal price points using a pseudorandom process.

Step 5a: processes the bids to determine if the first bid in the queue is to be applied in full, applied in part, or rejected.

Step 5b: if the bid is applied in full, deletes the bid from the queue and returns to Step 5a.

Step 5c: if the bid is applied in part, modifies the bid by removing the part of the bid that is applied and leaving the remainder of the bid in its place in the queue, and returns to Step 5a.

Step 5d: if the bid is rejected, leaves the bid in its place in the queue and determines if the next bid in the queue is to be:

1. applied in full, and if so, returns to Step 5b; or
2. applied in part, and if so, returns to Step 5c; or
3. rejected, and if so, this Step 5d is recursive.

Step 6: stops processing bids if:

1. a bid is rejected and there is no next bid in the queue; or
2. there is no bid remaining in the queue.

Step 7: determines:

1. the posted price for the lots of each product for the clock round in accordance with subclause (6); and
2. the posted demand for each bidder for the lots of each product for the clock round in accordance with paragraph 2B(6)(a) or 2C(6)(a), as the case may be.

Note: Clause 2B deals with increase bids. Clause 2C deals with decrease bids. For posted demands for maintain bids, see clause 2D.

Step 8: calculates the eligibility points of each bidder for the next clock round in accordance with paragraph 12(1)(b) and subclause 13(2).

(2) In relation to Step 1, a maintain bid is:

1. not collected by the processing algorithm; and
2. always applied in full in accordance with clause 2D; and
3. taken to be at the posted price for the current clock round.

(3) For Step 5b:

1. an increase bid is applied in full in accordance with the relevant subclauses in clause 2B;
2. a decrease bid is applied in full in accordance with the relevant subclauses in clause 2C.

(4) For Step 5c:

1. an increase bid is applied in part in accordance with the relevant subclauses in clause 2B;
2. a decrease bid is applied in part in accordance with the relevant subclauses in clause 2C.

(5) Step 5d may be recursive, as the reference in that step to a next bid in the queue that is rejected is a reference to something that is a next bid in the queue that is rejected because of the determination that occurs in that step.

Note: If an increase bid or a decrease bid is rejected, the bid is not applied at that time.

(6) For Step 7, the posted price for lots of a product is determined as follows:

1. if the excess demand is greater than zero for the lots of the product, the posted price is the clock price for the clock round; or
2. if the excess demand is not greater than zero for the lots of the product, the posted price is either:
3. if any decrease bid is applied in full or in part, the highest bid price at which a decrease bid is applied for the clock round; or
4. if no decrease bid is applied in full or in part, the opening price for the clock round.

**2B Applying an increase bid**

(1) In this clause, the available activity (in eligibility points) of a bidder, immediately before an increase bid is to be processed, is equal to the sum of:

1. the difference between:
2. the eligibility points of the bidder at the start of the clock round; and
3. the sum of the lot ratings for the total of the start demands of the bidder for each product at the start of the clock round; and
4. the difference between:
5. the sum of the lot ratings for the decrease bids of each product that have already been applied in full or in part, before the increase bid that is to be processed; and
6. the sum of the lot ratings for the increase bids of each product that have already been applied in full or in part, before the increase bid that is to be processed.

(2) If the available activity (in eligibility points), immediately before an increase bid is processed, is equal to or greater than the sum of the lot ratings for the increase bid that is to be processed, the increase bid is applied in full, such that the ***provisional posted demand*** for the lots of a product of a bidder is equal to the sum of:

(a) the number of lots of the product for the start demand of the bidder; and

(b) the number of lots for the parts of the increase bid of the product that have already been applied in part, if any, before the remainder of the increase bid is to be processed; and

(c) the number of lots for the increase bid of the product that is being processed.

Note: In the case of an increase bid that has been applied in part, the remainder of the increase bid will still have to be processed for the current clock round.

(3) If the available activity (in eligibility points), immediately before an increase bid is processed, is less than the sum of the lot ratings for the increase bid that is to be processed, the increase bid is applied in part (unless subclause (4) applies), such that the provisional posted demand for the lots of a product of a bidder is equal to the sum of:

1. the number of lots of the product for the start demand of the bidder; and
2. the number of lots for the parts of the increase bid of the product that have already been applied in part, if any, before the remainder of the increase bid is to be processed; and
3. the quotient, when expressed in number of lots, of:
4. the available activity (in eligibility points); and
5. the lot rating for the lot of the product;

rounded down to the nearest integer.

Note 1: Subparagraph (c)(i) is the numerator. Subparagraph (c)(ii) is the denominator.

Note 2: In the case of an increase bid that has been applied in part, the remainder of the increase bid will still have to be processed for the current clock round.

(4) If:

1. a minimum spectrum requirement has been selected for the lots of the product by the bidder; and
2. the provisional posted demand calculated in accordance with subclause (3) would have been less than the minimum spectrum requirement which has been selected for the lots of that product by the bidder;
3. the increase bid is rejected and the ***provisional posted demand*** for the lots of that product of the bidder is equal to zero.

(5) If the provisional posted demand for the lots of a product of a bidder calculated in accordance with either subclause (2) or (3), as the case may be, would have caused the bidder to exceed the bidder’s allocation limits (when expressed in number of lots) applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products, the provisional posted demand is reduced by the number of lots necessary to ensure that the ***provisional posted demand*** does not exceed the bidder’s allocation limits (when expressed in number of lots) applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products.

Note 1: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

Note 2: See also paragraph 15(1)(d).

(6) After all the increase bids and decrease bids in the queue are processed:

1. the posted demand for the lots of a product for a bidder for the current clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed; and
2. Step 8 of subclause 2A(1) is to be performed.

**2C Applying a decrease bid**

(1) In this clause, the ***provisional excess demand*** for lots of a product, immediately before a decrease bid is to be processed, is equal to the sum of:

1. the excess demand for the lots of the product at the start of the clock round; and
2. the difference between:
3. the number of lots for the increase bids of the product that have already been applied in full or in part, before the decrease bid that is to be processed; and
4. the number of lots for the decrease bids of the product that have already been applied in full or in part, before the decrease bid that is to be processed;

less:

1. the number of lots for the decrease bid of the product that is to be processed.

Note: In the case of a decrease bid that has been applied in part, the remainder of the decrease bid will still have to be processed for the current clock round.

(2) If the provisional excess demand, immediately before a decrease bid is processed, is equal to or greater than zero, the decrease bid is applied in full, such that the ***provisional posted demand*** for the lots of a product of a bidder is equal to:

(a) the number of lots of the product for the start demand of the bidder; less

(b) the number of lots for the parts of the decrease bid of the product that have already been applied in part, if any, before the remainder of the decrease bid is to be processed; less

(c) the number of lots for the decrease bid of the product that is to be processed.

Note: In the case of a decrease bid that has been applied in part, the remainder of the decrease bid will still have to be processed for the current clock round.

(3) If the provisional excess demand, immediately before a decrease bid is processed, is:

(a) less than zero; and

(b) if the absolute value of the provisional excess demand is greater than or equal to the number of lots of the product for the decrease bid that is being processed;

the decrease bid is rejected, such that the ***provisional posted demand*** for the lots of a product of a bidder is equal to the difference between:

(c) the number of lots of the product for the start demand of the bidder; and

(d) the number of lots for the parts of the decrease bid of the product that have already been applied in part, if any, before the remainder of the decrease bid is to be processed.

Note: In the case of a decrease bid that has been applied in part, the remainder of the decrease bid will still have to be processed for the current clock round.

(4) If the provisional excess demand, immediately before a decrease bid is processed, is:

* 1. less than zero; and
  2. if the absolute value of the provisional excess demand is less than the number of lots of the product for the decrease bid that is being processed;

the decrease bid is applied in part (unless subclause (5) applies), such that the ***provisional posted demand*** for the lots of a product of a bidder is equal to:

* 1. the number of lots of the product for the start demand of the bidder; less
  2. the number of lots for the parts of the decrease bid of the product that have already been applied in part, if any, before the remainder of the decrease bid is to be processed; less
  3. the difference between the number of lots for the decrease bid of the product that is to be processed and the absolute value of the provisional excess demand.

Note: In the case of a decrease bid that has been applied in part, the remainder of the decrease bid will still have to be processed for the current clock round.

(5) If:

1. a minimum spectrum requirement has been selected for the lots of the product by the bidder; and
2. the provisional posted demand calculated in accordance with subclause (4) would have been less than the minimum spectrum requirement which has been selected for the lots of that product by the bidder;

the decrease bid is applied in full and the ***provisional posted demand*** for the lots of that product of the bidder is equal to zero.

(6) After all the increase bids and decrease bids in the queue are processed:

1. the posted demand for the lots of a product for a bidder for the current clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed; and
2. Step 8 of subclause 2A(1) is to be performed.

**2D Applying a maintain bid**

A maintain bid requested by a bidder is applied in full, such that, for the clock round in which the maintain bid is requested, the bidder’s posted demand for the lots of the product is equal to the bidder’s start demand for the lots of that product for the clock round.

## Part 3—Arrangements for primary stage

3 Entries in the auction system before first clock round

Before the first clock round, the auction manager must enter in the auction system each bidder’s:

1. start demands for the lots of each product recorded in the register for the bidder under paragraph 40(2)(f) of this instrument; and
2. initial eligibility points recorded in the register for the bidder under paragraph 40(2)(g) of this instrument; and
3. minimum spectrum requirements (if any) for the lots of each product recorded in the register for the bidder under paragraph 40(2)(h) of this instrument; and
4. allocation limits for the lots of the following:
5. each product, other than the Perth lower band product and the Perth upper band product, as recorded in the register for the bidder under subparagraph 40(2)(i)(a) of this instrument;
6. the Perth combined products, as recorded in the register for the bidder under subparagraph 40(2)(i)(b) of this instrument.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

4 Setting bid increment percentage and eligibility requirement percentage

(1) Before the first clock round, the auction manager must set a percentage (the ***bid increment percentage***) for the lots of each product to be applied in calculating the clock price for the lots of a product in a clock round.

Note: The auction manager may vary the bid increment percentage set under this subclause, see clause 9.

(2) Before the first clock round, the auction manager must notify the bid increment percentage for the lots of each product to each bidder for the first clock round.

(3) The bid increment percentage may be different for different products and may be different for the same product between different clock rounds.

(4) Before the first clock round, the auction manager must set a percentage (the ***eligibility requirement percentage***) to be applied in calculating the activity target during each clock round.

Note: The auction manager may vary the eligibility requirement percentage set under this subclause, see clause 10.

(5) Before the first clock round, the auction manager must notify the eligibility requirement percentage to each bidder for the first clock round.

(6) The eligibility requirement percentage may be different for different clock rounds.

5 Schedule for clock rounds of the primary stage

(1) Clock rounds must start and end between 9.00 am and 5.00 pm on working days, other than a recess day.

(2) The scheduling of clock rounds between those times is at the auction manager’s discretion.

(3) There is no minimum or maximum length for a clock round, and no minimum or maximum length for the interval between clock rounds.

(4) There is no upper or lower limit on the number of clock rounds per day.

(5) Subject to section 46, the auction system will indicate to each bidder for the first clock round of a given day the anticipated schedule of clock rounds for that day at least 1 hour before the start time of the first clock round of the day. However, the auction manager may, at any time, modify the schedule of clock rounds. If this occurs, the auction manager must tell each bidder of the change as soon as practicable.

6 Recess days

(1) The auction manager may declare a day to be a ***recess day*** (whether or not the day is a working day) on which there will be no clock rounds.

(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 each bidder of this.

**7 Clock rounds of the primary stage**

(1) Each lot of a product is available for bidding in the first clock round, and in each subsequent clock round until the final clock round for bids on lots of the products available.

Note: Bidding cannot close on a single product – all products close together. The clock price, for a lot of a product, pauses if excess demand is not greater than zero on lots of the product after the clock round and no decrease bid was applied in full or in part for lots of the product during the bid processing for the clock round.

(2) Subject to this Schedule, each bidder may make a bid on lots of a product available for bidding during a clock round.

Note: Clause 14 sets out the general rules for a bidder to make a bid in a clock round. For the validity of bids, see clause 15.

8 Information available for clock rounds of the primary stage

(1) Before the start time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:

1. the start time of the clock round;
2. the end time of the clock round;
3. for the lots of each product available for bidding:
4. the opening price that will apply to the lots of the product in the clock round; and
5. the clock price that will apply to the lots of the product in the clock round;
6. for the lots of each product, if the excess demand is:
7. less than or equal to 4 lots of the product – a statement to that effect; or
8. greater than 4 lots of the product – the actual excess demand;
9. the eligibility points of the bidder for the clock round;
10. the eligibility requirement percentage for the clock round;
11. any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

(2) After the end time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:

1. the posted prices for the lots of each product in the clock round;
2. the posted demands of the bidder for the lots of each product in the clock round;
3. any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

9 Changing bid increment percentage

(1) The auction manager may, at any time during the primary stage, change the bid increment percentage for the lots of a product to be applied in calculating the clock price for the lots of a product in a clock round.

Note: For the bid increment percentage, see subclause 4(1).

(2) Before doing this, the auction manager must:

1. tell each bidder of the proposed change; and
2. ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
3. take into account any comments on the proposal that are received within that time.

(3) The auction manager must notify each bidder for the clock round when the change takes effect before that clock round.

Note: The clock price for lots of a product could only be reduced if the primary stage of the auction is restarted either from the beginning of the primary stage or from a previous clock round under section 51.

10 Changing eligibility requirement percentage

(1) The auction manager may, at any time during the primary stage, change the eligibility requirement percentage to be applied in calculating the activity target during a clock round.

Note: For the eligibility requirement percentage, see subclause 4(4).

(2) Before doing this, the auction manager must:

1. tell each bidder of the proposed change; and
2. ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
3. take into account any comments on the proposal that are received within that time.

(3) The auction manager must notify each bidder for the clock round when the change takes effect before that clock round.

## Part 4—Bidding in the primary stage

11 Definitions

(1) In this Part:

***activity target***, for a bidder during a clock round, means the figure obtained by multiplying the amount of the bidder’s eligibility points for that clock round by the eligibility requirement percentage set by the auction manager for that clock round, rounded up to the nearest integer.

(2) In this Part, a bidder is active on lots of a product for a clock round if the bidder has a posted demand greater than zero for the lots of the product after the end time of the clock round.

12 Eligibility points bidding cap

(1) In a clock round, a bidder’s eligibility points will be:

* 1. for the first clock round – the initial eligibility points recorded in the register for the bidder under paragraph 40(2)(g) of this instrument; or
  2. for any clock round other than the first clock round – the lesser of:

1. the bidder’s eligibility points in the previous clock round; and
2. the bidder’s eligibility points calculated in accordance with subclause 13(2).

Note:This means that if a bidder’s posted demands for the lots of each product are zero for any clock round, the bidder’s eligibility points will become zero and the bidder will not be entitled to bid in subsequent clock rounds for the lots of any products.

(2) A bidder is not entitled to bid in such a way that the sum, in eligibility points, of:

1. the total value of the lots of each product, in eligibility points, for the start demands of the bidder; and
2. the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;

less:

1. the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;

in any one clock round is greater than the bidder’s eligibility points at the time of the bid or bids.

13 Loss of eligibility points

(1) A bidder’s eligibility points for a clock round (the ***next clock round***) will be adjusted to an amount calculated in accordance with subclause (2) if the bidder does not meet its activity target in a clock round (the ***current clock round***).

(2) The amount of a bidder’s eligibility points under subclause (1) for the next clock round is to be calculated as follows:

(rounded up to the nearest integer);

where:

***E*** is the bidder’s eligibility points for the next clock round.

***R*** is the higher of:

* 1. the total value of the lots, in eligibility points, on which the bidder was active in the current clock round; or
  2. the sum, in eligibility points, of:

1. the total value of the lots of each product, in eligibility points, for the start demands of the bidder; and
2. the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;

less:

1. the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;

in the current clock round.

***P*** is the eligibility requirement percentage that applied in the current clock round.

*Example*

A bidder’s eligibility points at the start of a clock round is 20,000. The eligibility requirement percentage for the clock round is 60% (i.e. 12,000 eligibility points). After the clock round, the bidder is active for only 10,000 eligibility points (based on its posted demands), so eligibility points will be reduced as a result of under‑activity.

The bidder’s new eligibility points (***E***) will be current activity (***R —*** 10,000) divided by the activity requirement that applied in the clock round (***P —*** 0.6), which is 16,667 eligibility points.

(3) A bidder who loses eligibility points in a clock round is only entitled to bid in future clock rounds in such a way that the sum, in eligibility points, of:

1. the total value of the lots of each product, in eligibility points, for the start demands of the bidder; and
2. the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;

less:

(c) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;

is not greater than the bidder’s eligibility points as adjusted in accordance with this clause.

Note: There is nothing the bidder can do once the primary stage of the auction is under way to recover eligibility points.

14 Clock round bids

(1) A bidder is entitled to bid in a clock round if the bidder has eligibility points remaining for the clock round.

(2) A bidder may not make more than one bid for the lots of each product in each clock round.

(3) Except where subsection 50(1) or 50(2) applies, a bidder’s bid is taken to have been made in a clock round when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 50(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 50(2) allows the auction manager to permit a bid to be made after a clock round has ended, in certain circumstances.

(4) A bidder may change, delete or replace a bid in the auction system during a clock round as often as desired, subject to the data validation checks that are performed by the auction system. The bid for the lots of a product that will be treated as binding for a bidder is the bid in the auction system at the end time of the clock round.

Note: A bidder is also taken to make a bid in the circumstances specified in section 50.

15 Validity of bids

(1) A bid in a clock round is valid if all of the following apply in relation to the bid:

* 1. except where subsection 50(2) applies, the bid is received by the auction system between the start time and end time of the clock round;

Note: Subsection 50(2) allows the auction manager to permit a bid to be made after a clock round has ended, in certain circumstances.

1. for an increase bid or a decrease bid – the bid price is not less than the opening price and not greater than the clock price for the lots of a product for the clock round;
2. for an increase bid or a decrease bid – the bid price is a multiple of one hundred;
3. for an increase bid for lots of a product – the sum (when expressed in MHz) of:
4. the total size of the lots of the product for the start demand of the bidder; and
5. the total size of the lots of the product for the increase bid of the bidder;

in the clock round does not exceed the bidder’s allocation limits (when expressed in MHz) applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products;

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

1. for an increase bid for lots of a product – the sum of:

(i) the number of lots for the bidder’s start demand for the product; and

(ii) the number of lots for the bidder’s increase bid for the product;

in the clock round is not greater than the number of lots for the supply of the product;

1. for an increase bid for lots of a product – for a bidder that selected a minimum spectrum requirement, if the number of lots for the bidder’s start demand for the product in the clock round is equal to zero, the number of lots for the bidder’s increase bid for the product in the clock round is at least the minimum spectrum requirement for the lots of the product;

(g) for a decrease bid for lots of a product – the difference between:

1. the number of lots for the bidder’s start demand for the product; and
2. the number of lots for the bidder’s decrease bid for the product;

in the clock round is not less than zero;

(h) for a decrease bid for lots of a product – for a bidder that selected a minimum spectrum requirement, the difference between:

1. the number of lots of the bidder’s start demand for the product; and
2. the number of lots for the bidder’s decrease bid for the product;

in the clock round is either zero or at least the minimum spectrum requirement for the lots of the product;

(i) for an increase bid or a decrease bid or both – the sum, in eligibility points, of:

1. the total value of the lots of each product, in eligibility points, for all the start demands of the bidder; and
2. the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;

less:

1. the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;

in the clock round is not greater than the eligibility points of the bidder for the clock round.

(2) If a bidder does not make a bid, or does not make a valid bid, for lots of a product in a clock round, the bidder is taken to have requested a decrease bid for the number of lots equal to the bidder’s start demand for the lots of the product in that clock round, at the opening price for the lots of the product for that clock round.

Note 1: For subclause (2), the auction system places an automatic decrease bid for the relevant number of lots of the product for the clock round. This decrease bid is processed in accordance with clauses 2A and 2C and may be applied in full, applied in part, or rejected. This may affect the bidder’s eligibility points for the next clock round.

Note 2: During the bid processing for a clock round, if a decrease bid is applied in part leaving a remainder of the decrease bid, or a decrease bid is rejected, a bidder will still have a posted demand for lots of a product for the clock round to which the decrease bid relates.

## Part 5—Determining the primary winners and primary prices

16 End of clock rounds

The clock rounds of the primary stage will end when there is a clock round in which, for every product, the excess demand is not greater than zero for the lots of the product (the ***final clock round***). At this point, the auction manager will announce to each bidder, using the auction system, that the clock rounds have ended and that the auction will progress to the secondary stage (if required) or the assignment stage.

17 Determination of primary winners and primary prices

(1) A bidder who has posted demands for a lot or lots of a product (the ***allocated lot***) as a result of the final clock round in the primary stage is a ***primary winner*** in the primary stage for the lot or lots of the product.

(2) The ***total posted price***, for a primary winner, for an allocated lot or lots of a product in the primary stage is an amount equal to the posted price for a lot of the product for the final clock round multiplied by the number of lots comprising the posted demand of the primary winner for that product.

(3) The ***primary price*** to be paid by a primary winner for all the allocated lots of each product of the primary winner is the sum of all the primary winner’s total posted prices.

(4) The primary price calculated under subclause (3) must be rounded up to the next hundred.

Note: This clause relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

## Part 6—Bringing the primary stage to an end

18 Results of the primary stage

(1) After the primary winners and primary prices are determined, the auction manager must tell each primary winner, using the auction system:

* 1. the total number of lots of each product allocated to the primary winner; and
  2. the total posted price for the allocated lots of each product and the primary price to be paid by the primary winner for all allocated lots.

(2) After the primary winners and primary prices are determined, the auction manager must tell all bidders, using the auction system:

* 1. the total number of primary winners; and
  2. the total number of lots of each product that have been allocated to primary winners.

19 End of the primary stage

Immediately after the auction manager provides the results in accordance with subclauses 18(1) and 18(2), the auction manager must tell each bidder, using the auction system, that the primary stage is completed.

# Schedule 2—Rules for the secondary stage of the auction

(subsections 4(1) and 49(2))

## Part 1—Application and interpretation

1 Application of Schedule

(1) This Schedule applies to a lot of a product that is available in the secondary stage of the auction determined in accordance with subclause (2) (the ***residual lot***).

Note: If all lots of each product were allocated in the primary stage, there is no secondary stage.

(2) If, for a product, after the final clock round of the primary stage, the excess demand for the lots of the product is equal to -1, the number of residual lots of the product available in the secondary stage of the auction is 1.

(3) If, for a product, after the final clock round of the primary stage, the excess demand for the lots of the product is not equal to -1, there are no residual lots of the product available in the secondary stage of the auction.

(4) In this clause, ***excess demand*** has the meaning given by subclause 2(1) of Schedule 1.

1A Bidders to choose between Perth lots, or not to bid on Perth lots

1. If:
2. this Schedule applies to both one lot for the Perth lower band product and one lot for the Perth upper band product (the ***two Perth lots***); and
3. there is at least one bidder (the ***affected bidder***) for which:
4. the sum (when expressed in MHz) of the size of the two Perth lots and the size of the lots of the Perth combined products allocated to the bidder in the primary stage would exceed the bidder’s allocation limits applicable to the Perth combined products; and
5. the sum (when expressed in MHz) of the size of one of those two Perth lots and the size of the lots of the Perth combined products allocated to the bidder in the primary stage would not exceed the bidder’s allocation limits applicable to the Perth combined products;

then, before the first round of the secondary stage:

1. the auction manager must, in writing, notify all affected bidders that one lot for the Perth lower band product and one lot for the Perth upper band product are available for bidding in the secondary stage; and
2. the auction manager must nominate a time and date, which is before the first round of the secondary stage, before which an affected bidder may make a nomination under subclause (2) (the ***nomination deadline***).
3. Before the nomination deadline, a bidder may nominate in writing either (but not both):
4. to bid on the lot for the Perth lower band product; or
5. to bid on the lot for the Perth upper band product.
6. If a bidder nominates in accordance with subclause (2) to bid on the lot for the Perth lower band product, the bidder must not make a bid during the secondary stage on the lot for the Perth upper band product.
7. If a bidder nominates in accordance with subclause (2) to bid on the lot for the Perth upper band product, the bidder must not make a bid during the secondary stage on the lot for the Perth lower band product.
8. If a bidder does not nominate in accordance with subclause (2), the bidder must not make a bid on either of the two Perth lots.

Note 1: Paragraph 12(d) makes any bid on a single lot of the Perth lower band product or the Perth upper band product invalid if it would exceed the bidder’s allocation limits applicable to the Perth combined products.

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

2 Interpretation

(1) In this Schedule:

***bid*** means a bid made on a single lot during the secondary stage, and includes a bid taken to be made on a single lot.

***bid increment percentage***: see subclause 3(7).

***bidder***, for a round of the secondary stage, means a bidder who may make a bid on a lot in that round in accordance with clause 10.

Note: Clause 10 sets out the general rules for a bidder to make a bid on a lot in a round of the secondary stage. Among other things, a bidder may only make a bid on a lot if the lot meets the minimum spectrum requirement test for the bidder.

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

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

1. less than the specified price of the lot for that round; and
2. either:
3. in the first round of the secondary stage – equal to or greater than the starting price for the lot; or
4. in any round other than the first round of the secondary stage – equal to or greater than the specified price of the lot for the previous round of the secondary stage.

***final high bid***: see subclause 14(3).

Note: Subclause 15(3) may affect the meaning of ***final high bid***.

***final round for bids on a lot***: see subclause 14(1).

***final round of the secondary stage***: see subclause 14(2).

***lot*** means a residual lot of a product determined in accordance with subclause 1(2).

***meets the minimum spectrum requirement test***: see subclause (2).

***recess day***: see subclause 6(1).

***residual price***: see subclause 17(2).

***round***, for a lot, means a round for bids in the secondary stage.

***secondary price***: see subclause 17(3).

***secondary winner***: see subclauses 14(4) and 15(2).

***specified price***: see subclauses 8(2), 8(3) and 8(4).

Note:For the definition of ***size***, see subsection 5(2) of this instrument.

(2) In this Schedule, in relation to a lot of a product, a lot ***meets the minimum spectrum requirement test*** for a bidder if either of the following applies:

* 1. the bidder did not select a minimum spectrum requirement for the lots of that product; or
  2. if the bidder selected a minimum spectrum requirement for the lots of that product – the bidder was allocated in the primary stage at least the number of lots of that product equal to the minimum spectrum requirement.

## Part 2—Arrangements for secondary stage

3 Schedule for rounds of the secondary stage and setting bid increment percentage

(1) There must be at least one working day between the final clock round of the primary stage and the first round of the secondary stage.

(2) Rounds of the secondary stage must start and end between 9.00 am and 5.00 pm on working days, other than a recess day.

(3) The scheduling of rounds between those times is at the auction manager’s discretion.

(4) There is no minimum or maximum length for a round, and no minimum or maximum length for the interval between rounds.

(5) There is no upper or lower limit on the number of rounds per day.

(6) The auction system will indicate to each bidder for the first round of a given day the anticipated schedule of rounds for that 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 tell each bidder of the change as soon as practicable.

(7) Before the first round of the secondary stage, the auction manager must set a percentage (the ***bid increment percentage***)for each lot as a percentage of the starting price for the lot for the first round of the secondary stage, and of the specified price for the lot in any other round of the secondary stage.

Note: The auction manager may vary the bid increment percentage set under this subclause, see clause 9.

(8) Before the first round of the secondary stage, the auction manager must notify the bid increment percentage for each lot to each bidder for the first round of the secondary stage.

(9) The bid increment percentage may be different for different lots and may be different for the same lot between different rounds of the secondary stage.

4 Rounds of the secondary stage

(1) Each lot is available for bidding in the first round of the secondary stage, and in each subsequent round of the secondary stage until the final round for bids on that lot.

(2) During a round of the secondary stage, and subject to this Schedule, each bidder for the round may make a bid on each lot that:

1. is available for bidding during that round; and
2. meets the minimum spectrum requirement test for the bidder.

Note: Each bid is made on a single lot: see the definition of ***bid*** in subclause 2(1).

(3) However, a bidder cannot bid on a lot of a product if allocation of that lot to the bidder would exceed the bidder’s allocation limits:

1. applicable to the product, other than the Perth lower band product and the Perth upper band product; or
2. applicable to the Perth combined products.

Note 1: Eligibility points are not required to bid in the secondary stage.

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

5 Information available during rounds of the secondary stage

(1) Before the start time of each round of the secondary stage, the auction manager must provide the following information for that round to each bidder, using the auction system:

* 1. the start time of the round;
  2. the end time of the round;
  3. for each lot available for bidding in that round that meets the minimum spectrum requirement test for the bidder and on which the bidder may make a bid:

1. the specified price that will apply to the lot in the round; and
2. for the first round of the secondary stage – the starting price for the lot; and
3. for each round other than the first round of the secondary stage – the specified price that applied to that lot in the previous round of the secondary stage; and
4. the total number of bidders for whom:

(A) the lot meets the minimum spectrum requirement test; and

(B) allocation of the lot as a unit of a product would not exceed the bidder’s allocation limits applicable to the product (other than the Perth lower band product and the Perth upper band product) or applicable to the Perth combined products;

* 1. any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

Note 1: Clause 10 sets out the general rules for a bidder to make a bid on a lot in a round of the secondary stage. Among other things, a bidder may only make a bid on a lot if the lot meets the minimum spectrum requirement test for the bidder.

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

(2) After each round of the secondary stage, the auction manager must provide the following information for that round to each bidder, using the auction system:

* 1. the bids made (if any) by the bidder during the round;
  2. if, as a result of the round, the bidder is the secondary winner for a lot – the secondary price for that lot;
  3. for each lot available for bidding in that round that meets the minimum spectrum requirement test for the bidder and on which the bidder may make a bid – the number of bidders remaining in the secondary stage of the auction for that lot after the end time of the round;
  4. any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

(3) Subclauses (1) and (2) do not prevent the auction manager or the ACMA from providing the information specified in those subclauses to other bidders at any time during the secondary stage.

6 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 each bidder of this.

## Part 3—Bidding in the secondary stage

7 When bidder cannot make a bid on a lot

If, in a round of the secondary stage:

* 1. a bidder does not make a bid on a lot; or
  2. a bidder is an exit bidder in the circumstances set out in clause 13 in relation to a lot;

the bidder cannot make a bid on that lot in any subsequent round of the secondary stage.

Note 1: A bidder makes a continue bid or exit bid on a lot in a round of the secondary stage in the circumstances specified in clause 11 or 13.

Note 2: An exit bid made by the bidder may still be the final high bid for a lot, except where clause 13 applies.

8 Starting price and specified price

(1) A bid on a lot for an amount less than the starting price for that lot will not be accepted.

Note: For starting prices, see paragraph 28(1)(d) of this instrument. For the validity of bids, see clause 12.

(2) The ***specified price*** for a lot in the first round of the secondary stage is the sum of:

1. the starting price for the lot; and
2. the bid increment percentage for the lot multiplied by that starting price;

rounded up to the next hundred.

(3) Subject to subclause (4), the ***specified price*** for a lot in a round of the secondary stage, other than the first round of the secondary stage, is the sum of:

1. the specified price for the lot in the previous round of the secondary stage; and
2. the bid increment percentage for the lot multiplied by that specified price;

rounded up to the next hundred.

(4) If a round in the secondary stage is the final round for bids on a lot, there is no ***specified price*** for the lot in any later round of the secondary stage.

9 Changing bid increment percentage

(1) The auction manager may, at any time during the secondary stage, change the bid increment percentage for a lot to be applied in calculating the specified price for a lot in a round of the secondary stage.

Note: For the bid increment percentage, see subclause 3(7).

(2) Before doing this, the auction manager must:

* 1. tell each bidder of the proposed change; and
  2. ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
  3. take into account any comments on the proposal that are received within that time.

(3) The auction manager must notify each bidder for the round when the change takes effect before that round.

10 General rules about bidding

(1) A bidder:

1. may only make a bid on a lot if the lot meets the minimum spectrum requirement test for the bidder; and
2. may only make a bid that is valid in accordance with clause 12; and
3. must not make a bid on a lot if clause 7 or 13 provides that the bidder cannot make a bid on the lot.

(2) Except where subsection 50(1) or 50(2) applies, a bidder’s bid is taken to have been made in a round of the secondary stage when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 50(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 50(2) allows the auction manager to permit a bid to be made after a round of the secondary stage has ended, in certain circumstances.

(3) A bidder may change, delete or replace a bid in the auction system during a round of the secondary stage as often as desired, subject to the data validation checks that are performed by the auction system. The bid for a lot that will be treated as binding for a bidder is the bid in the auction system at the end time of the round.

Note: A bidder makes a continue bid or exit bid on a lot in a round of the secondary stage in the circumstances specified in clause 11 or 13. The definition of ***bid*** in subclause 2(1) includes a bid that is taken to be made.

11 Continue bid made at or greater than specified price

(1) A continue bid made on a lot in a round of the secondary stage (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:

1. 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
2. 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 subclause 2(1) includes a bid that is taken to be made.

Example: During round *N* of the secondary stage, 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 $133,100, 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.

12 Validity of bids

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

* 1. either:

1. if the round is the first round of the secondary stage for bids on a lot – the bid is not less than the starting price for the lot; or
2. if the round is for bids on a lot, other than the first round of the secondary stage – the bid is not less than the specified price of the lot in the previous round of the secondary stage;
   1. subject to subsection 50(2), the bid is received by the auction system between the start time and end time of the round;
   2. the bid is a multiple of one hundred;
   3. for each product, other than the Perth lower band product and the Perth upper band product, the sum (when expressed in MHz) of:
      * 1. the size of the lot of the product bid for in the round of the secondary stage; and
        2. the total size of the lots of the product allocated to the bidder in the primary stage;

does not exceed the bidder’s allocation limits (when expressed in MHz) applicable to the product;

* 1. without limiting paragraph (f), for the Perth combined products, the sum (when expressed in MHz) of:
     1. the size of the lot of the Perth lower band product or the Perth upper band product bid for in the round of the secondary stage; and
     2. for a lot that is a unit of the Perth lower band product – the size of the lot of the Perth upper band product already allocated to the bidder in the secondary stage; and
     3. for a lot that is a unit of the Perth upper band product – the size of the lot of the Perth lower band product already allocated to the bidder in the secondary stage; and
     4. the total size of the lots of the Perth lower band product and the Perth upper band product allocated to the bidder in the primary stage;

does not exceed the bidder’s allocation limits (when expressed in MHz) applicable to the Perth combined products;

(f) the bid is not prohibited by subclause 1A(3) or 1A(4) or 1A(5).

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 subclause 2(1) includes a bid that is taken to be made.

Note 3: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in the Perth area (among other areas). However, the lots in the Perth area are divided into two different products: the Perth lower band product and the Perth upper band product. For the purposes of the allocation limits, the two products are treated as just one product. For all other purposes, they are to be treated as two products. See subsection 11(2).

13 Exit bids – exclusion from further participation

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

1. 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
2. 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 of the secondary stage.

Note 1: For a round of the secondary stage 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 4 of this Schedule.

Note 2: The definition of ***bid*** in subclause 2(1) includes a bid that is taken to be made.

## Part 4—Determining the secondary winners and secondary prices

14 Final round for bids on a lot, final round of the secondary stage, and final high bid

(1) The ***final round for bids on a lot*** is the first round of the secondary stage where one of the following applies:

* 1. only one bid is made on the lot; or
  2. one or more exit bids, and no more than one continue bid, are made on the lot; or
  3. no bids are made on the lot.

Note 1: For rules about bidding, see clauses 10, 11, 12 and 13.

Note 2: The definition of ***bid*** in subclause 2(1) includes a bid that is taken to be made.

(2) If, in relation to a round of the secondary stage, both of the following apply:

* 1. the round was a round for bids on one or more lots; and
  2. after the round, the final round for bids on a lot has occurred for each lot;

the round is the ***final round of the secondary stage***.

(3) For a lot other than a lot for which no bids were made in the first round of the secondary stage, the ***final high bid*** is:

* 1. if one bid was made on the lot in the final round for bids on the lot – that bid;
  2. if one continue bid was made on the lot in the final round for bids on the lot – that continue bid;
  3. if all of the following apply:

1. no continue bid was made on the lot in the final round for bids on the lot;
2. two or more exit bids were made on the lot in the final round for bids on the lot;
3. one of those exit bids (the ***high exit bid***) was greater than each of the other exit bids;

– the high exit bid;

* 1. in any other case – selected in accordance with clause 15.

(4) Subject to subclause 15(2), the bidder who made the final high bid on a lot is the ***secondary winner*** for that lot.

Note 1: An exit bid may have been a continue bid in a previous round of the secondary stage, in accordance with clause 11.

Note 2: The definition of ***bid*** in subclause 2(1) includes a bid that is taken to be made.

15 Tiebreaker for a lot

(1) This clause applies in relation to a lot if:

* 1. no continue bid was made on the lot in the final round for bids on the lot; and
  2. two or more exit bids were made on the lot in the final round for bids on the lot; and
  3. of those exit bids:

1. two or more of those exit bids were equal (the ***tied exit bids***); and
2. the tied exit bids were greater than each other exit bid mentioned in paragraph (b).

(2) Where this clause applies, the ***secondary winner*** for the lot will be selected from the bidders who made the tied exit bids using a pseudorandom process. The pseudorandom process must be conducted before the next round of the secondary stage (if any).

(3) For the purposes of paragraph 14(3)(d), the ***final high bid*** on the lot is the amount of the last bid made by the secondary winner.

## Part 5—Bringing the secondary stage to an end

16 End of rounds of the secondary stage

(1) The rounds of the secondary stage will end immediately after:

* 1. if:

1. clause 15 applies in relation to a lot; and
2. for each other lot, either:

(A) there is a secondary winner for the lot; or

(B) there were no bids on the lot in the first round of the secondary stage;

– the pseudorandom process mentioned in subclause 15(2) occurs;

* 1. in any other case – the final round of the secondary stage.

(2) After the rounds of the secondary stage end, the auction manager must tell each bidder, using the auction system, that the rounds of the secondary stage have ended and that the auction will progress to the assignment stage.

17 Determination of secondary winners and secondary prices

(1) Subject to subclause 15(2), a bidder who has the final high bid for a lot (the ***allocated lot***), in accordance with subclause 14(4), as a result of the final round for bids on a lot in the secondary stage is a secondary winner in the secondary stage for the lot of the product.

(2) For the purposes of subclause (3), the ***residual price*** for an allocated lot of a product in the secondary stage is an amount equal to:

1. if there is only one bid on the lot – the starting price for the lot; or
2. if there is more than one bid on the lot – the highest bid made for the lot by any bidder, during any round of the secondary stage, other than the final high bid.

(3) The ***secondary price*** to be paid by a secondary winner for all the allocated lots of each product of the secondary winner is the sum of all the secondary winner’s residual prices.

(4) The secondary price calculated under subclause (3) must be rounded up to the next hundred.

Note:This clause relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

18 Results of the secondary stage

(1) After the secondary winners and secondary prices are determined, the auction manager must tell each secondary winner, using the auction system:

* 1. the lots of each product allocated to the secondary winner; and
  2. the residual price for the allocated lot of each product and the secondary price to be paid by the secondary winner for all allocated lots.

(2) After the secondary winners and secondary prices are determined, the auction manager must tell all bidders (in the primary stage and secondary stage):

1. the total number of secondary winners; and
2. whether a lot of a product has been allocated to secondary winners.

**19 End of the secondary stage**

(1) The auction manager must tell each primary winner and each secondary winner, the sum of:

1. the primary price; and
2. the secondary price;
3. for all the allocated lots, in the primary stage or secondary stage, of each product of that winner.

(2) Immediately after the auction manager provides the results in accordance with subclauses 18(1) and 18(2), the auction manager must tell each bidder that the secondary stage is completed.

# Schedule 3—Rules for the assignment stage of the auction

(subsections 4(1) and 49(3))

## Part 1—Application and interpretation

1 Application of Schedule

This Schedule applies to the lots of each product that were allocated to a bidder in the primary stage or secondary stage.

Note: There is only a secondary stage if there is at least 1 product for which there was only 1 unallocated lot after the primary stage.

2 Interpretation

In this Schedule:

***assignment bid***: see subclauses 5(1), 5(5) and 5(6).

***assignment price*** means an amount charged for the assignment of a particular frequency range.

***assignment round*** means a round in the assignment stage for the making of assignment bids for the assignment of frequency ranges to the lots of each product that were allocated to a bidder in the primary stage or secondary stage.

***assignment winner***: see subclause 8(7).

***list of frequency range options*** includes a set of frequency range options.

***results***: see clause 9.

***total assignment price***: see subclause 8(8).

Note:For the definition of ***size***, see subsection 5(2) of this instrument.

## Part 2—Arrangements for assignment stage

3 Schedule for assignment rounds of the assignment stage

(1) After the completion of the primary stage and secondary stage (if any), the auction manager must announce:

* 1. the anticipated start time and end time of each assignment round; and
  2. the product or products that will be the subject of each assignment round.

(2) There must be at least 2 working days between the completion of the primary stage and secondary stage (if any) and the first assignment round.

(3) Assignment rounds must start and end between 9.00 am and 5.00 pm on working days.

(4) The scheduling of assignment rounds between those times is at the auction manager’s discretion.

(5) The start time and end time of each assignment round must be announced at least 1 hour before the assignment round starts.

(6) The auction manager has discretion over the duration of assignment rounds.

(7) The auction manager has discretion over the order of the products that are to become the subject of an assignment round.

(8) Two or more products may be the subject of a given assignment round. A product must not be the subject of more than one assignment round.

## Part 3—Bidding in the assignment stage

4 Frequency range options in assignment rounds

(1) Bidding in an assignment round is only open to bidders who were allocated, in the primary stage or secondary stage, at least one lot of a product that is the subject of the assignment round.

(2) Subject to subclauses (3) and (4), for each product, the auction manager must determine a list of frequency range options available to each bidder so that:

1. the frequency range included within each option for a bidder is a contiguous frequency range corresponding in bandwidth to the total size of the lots of the product that the bidder was allocated in the primary stage or secondary stage; and
2. for each option in the list of frequency range options, there exists at least one frequency range option for every other bidder so that:
3. each bidder’s frequency range complies with paragraph (a); and
4. none of the frequency ranges overlap.

(3) If some lots of a product were not allocated in the primary stage or secondary stage (if any), the auction manager must, in determining the frequency range options available to each bidder, ensure that the frequency range assigned to:

1. the unallocated lots of the product, other than the Perth lower band product, will be a contiguous frequency range corresponding in bandwidth to the total size of those unallocated lots and adjacent to the frequency 3700 MHz;
2. the unallocated lots of the Perth lower band product will be a contiguous frequency range corresponding in bandwidth to the total size of those unallocated lots.

(4) If, in the primary stage or secondary stage:

1. one or more lots of the Perth upper band product (the ***upper band lots***); and
2. one or more lots of the Perth lower band product (the ***lower band lots***);

were allocated to a bidder, the auction manager must, in determining the frequency range options available to each bidder:

1. if only one bidder was allocated lower band lots and upper band lots, ensure that the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;
2. if two or more bidders were allocated lower band lots and upper band lots, ensure that, for the bidder who was allocated the most lower band lots and upper band lots, the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;
3. if two or more bidders were allocated lower band lots and upper band lots and the total number of those lots is the same for each bidder, but the number of upper band lots is not the same, ensure that, for the bidder who was allocated the most upper band lots, the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;
4. if two or more bidders were allocated lower band lots and upper band lots and were allocated the same number of lower band lots and the same number of upper band lots:
5. the lower band lots and the upper band lots are each to become the subject of an assignment round; and
6. subclause (6) is to apply.

Note: For assignment rounds arising under paragraph (f), a frequency range assigned to lower band lots may not necessarily be adjacent to a frequency range assigned to upper band lots.

(5) If a bidder is participating in a given assignment round for more than one product, the auction manager may determine frequency range options available to the bidder that deal with the products as a group, providing the requirements of subclause (2) (subject to subclauses (3) and (4)) are met for each individual product in the group.

(6) At least 2 working days before the start of the first assignment round, the auction manager must provide each bidder participating in the assignment stage with the list of frequency range options available to the bidder in each of the assignment rounds for the lots of a product that were allocated to the bidder in the primary stage or secondary stage.

5 Assignment bids

(1) An ***assignment bid*** consists of:

* 1. the frequency range option that is being bid for; and
  2. a bid price for the frequency range option that is a multiple of one hundred.

(2) A bidder may submit a single assignment bid for any option in the list of frequency range options provided by the auction manager. A bidder is not permitted to bid for any other frequency range.

(3) Except where subsection 50(1) or 50(2) applies, a bidder’s assignment bid is taken to have been made in an assignment round when the assignment bid has passed data validation checks that are performed by the auction system.

Note: Subsection 50(1) allows the auction manager to permit an assignment bid to be made other than by using the auction system, in certain circumstances. Subsection 50(2) allows the auction manager to permit an assignment bid to be made after an assignment round has ended, in certain circumstances.

(4) A bidder may change, delete or replace an assignment bid in the auction system during an assignment round as often as desired, subject to the data validation checks that are performed by the auction system. The assignment bid that will be treated as binding for a bidder is the assignment bid in the auction system at the end time of the assignment round.

(5) Any frequency range option for which no assignment bid is received, or for which an invalid assignment bid is received, is taken to have an assignment bid with a bid price of zero dollars.

(6) If a bidder does not submit any assignment bid, the bidder will be taken to have bid zero dollars for every frequency range option.

6 Validity of assignment bids

An assignment bid is valid if:

1. except where subsection 50(2) applies, the assignment bid is received between the start time and end time of the assignment round for the product or group of products; and
2. the assignment bid is for a frequency range option made available to the bidder; and
3. the amount bid for the frequency range option is a multiple of one hundred.

Note: Subsection 50(2) allows the auction manager to permit an assignment bid to be made after an assignment round has ended, in certain circumstances.

## Part 4—Determining winning assignment bids and assignment prices

7 Determination of winning assignment bids

(1) After an assignment round has ended, the auction manager must determine the winning assignment bids for each product or group of products bid for in the assignment round and tell each winning assignment round bidder its winning assignment bid.

(2) The winning assignment bids must be a combination of valid assignment bids such that:

1. exactly one assignment bid (whether a submitted assignment bid or an assignment bid of zero dollars taken to have been made under subclause 5(5) or 5(6)) is selected from each bidder; and
2. the frequency ranges included in any pair of winning assignment bids for a product or group of products do not overlap; and
3. if relevant, the frequency range of any unallocated lots of a product is assigned in accordance with subclause 4(3); and
4. if relevant, subclause 4(4) is applied.

(3) Subject to the constraints in subclause (2), the assignment bids selected must maximise the sum of the assignment bid prices.

(4) If more than one combination of assignment bids meets the criterion in subclause (3), the winning combination must be selected by a pseudorandom process.

Note:This clause relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

8 Determination of assignment prices

(1) The auction manager must determine the assignment price for each winning assignment bid in an assignment round and tell each winning assignment round bidder its winning assignment price.

(2) If there is only one bidder in an assignment round, then the assignment price must be zero. Otherwise, the auction manager must determine the assignment price in accordance with the following subclauses.

(3) The assignment price must be no more than the assignment bid price.

(4) The assignment price may be zero.

(5) Subject to the constraint in subclause (3), a set of assignment prices in the assignment round must be selected so that:

1. there is no alternative bidder, or group of bidders, who (based on their assignment bids) would pay more than any winning assignment round bidder or group of winning assignment round bidders; and
2. if more than one set of assignment prices satisfies paragraph (a) – the sum of the assignment prices is also minimised; and
3. if more than one set of assignment prices satisfies paragraphs (a) and (b) – it is the solution to the formula in subclause (6).

(6) For paragraph (5)(c), the formula is:



subject to  satisfying paragraphs (5)(a) and (5)(b),

where:

|  |  |
| --- | --- |
|  | is a set of assignment prices. |
|  | is the index of each bidder (*j*) in the set of all bidders participating in the assignment round (*J*). |
|  | is the set of prices the bidders’ assigned lots would have had at the starting prices for the lots. |
|  | is the set of Vickrey prices for the bidders, the price for each bidder *j* being:  (a) the sum of bid prices for the combination of assignment bids that would have been selected under subclause 7(3) if bidder *j* had submitted assignment bids of zero dollars for every frequency range option; less  (b) the sum of bid prices for all other winning assignment bids in the assignment round. |

Note: For starting prices, see paragraph 28(1)(d) of this instrument.

(7) A bidder who has assignment prices for winning assignment bids in an assignment round is an ***assignment winner*** in the assignment stage for an assignment of a frequency range or frequency ranges to lots of a product or group of products.

(8) For the purposes of subclause (9), the ***total assignment price*** for assignment of a frequency range or frequency ranges to lots of a product or group of products in the assignment stage is an amount equal to the sum of the assignment prices for the assignment of all frequency ranges of the assignment winner.

(9) The total assignment price is to be paid by the assignment winner.

(10) The assignment prices calculated under subclause (5) must be rounded up to the next hundred.

Note:This clause relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

## Part 5—Bringing the assignment stage to an end

9 Results of the assignment stage

After the end of all assignment rounds, the auction manager must tell each winning assignment round bidder:

1. the frequency ranges assigned to the lots of each product that were allocated to the bidder in the primary stage or secondary stage; and
2. any assignment price for the frequency ranges assigned.

10 End of the assignment stage

The assignment stage is complete when the auction manager has notified all bidders of the results of every assignment round.