

## EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

### ***Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020***

#### **Authority**

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020* (the Determination) under sections 60 and 294 of the *Radiocommunications Act 1992* (the Act).

Under section 60, the ACMA must determine, in writing, the procedures to be applied in allocating spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act. Under section 294, the ACMA may make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the times when those charges are payable. It is noted that provisions of this instrument made in reliance on section 60 of the Act are not subject to disallowance (see paragraph 44(2)(b) of the *Legislation Act 2003* (the LA) and item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, provisions of the Determination which rely on section 294 of the Act are subject to disallowance and each such provision is identified in the notes at Attachment A. The relevant provisions of the Determination that are subject to disallowance are as follows:

- > section 9;
- > paragraph 27(1)(a);
- > paragraph 37(1)(a);
- > Division 2 of Part 6;
- > clause 17 of Schedule 1;
- > clause 17 of Schedule 2;
- > clauses 7 and 8 of Schedule 3;
- > Schedule 4.

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

The Determination sets out the procedures to be applied in allocating spectrum licences in relation to spectrum within the frequency range 25.1 GHz to 27.5 GHz (the 26 GHz band) and within specified areas. These licences will be allocated in a single auction using the Enhanced Simultaneous Multi-Round Ascending (ESMRA) auction format.

The Determination also fixes the spectrum access charges payable by the persons to whom such licences are allocated, by reference to the winning prices at the auction.

#### *Background*

On 18 October 2019, the Minister for Communications, Cyber Safety and the Arts (the Minister) made the *Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019* (the re-allocation declaration), which provided that the 26 GHz band, within named geographic areas of Australia, be re-allocated by issuing spectrum licences. The circumstances and reasons for making this spectrum subject to re-allocation are explained in the explanatory statement to the re-allocation declaration.

In accordance with section 153L of the Act, the effect of this declaration is that the ACMA must allocate the spectrum subject to the re-allocation declaration by issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, in accordance with a marketing plan prepared under section 39A of the Act. During 2021, the ACMA intends to allocate each of the parts of the 26 GHz band specified in the re-allocation declaration through the 26 GHz spectrum auction.

#### *Spectrum licence limits direction*

On 9 August 2020, the Minister gave the ACMA a direction under subsection 60(10) of the Act, being the *Radiocommunications (Spectrum Licence Limits—26 GHz Band) Direction 2020* (the spectrum licence limits direction). This directed the ACMA to determine allocation procedures under subsection 60(1) of the Act that impose limits (allocation limits) on the aggregate of the parts of the spectrum that may be used by a person, or specified group of persons, as a result of the allocation of spectrum licences. The circumstances and reasons for making the spectrum licence limits direction are set out in the explanatory statement to that direction.

The effect of these allocation limits is that the ACMA must determine allocation procedures that ensure that no person or specified group of persons may, as a result of the allocation of a spectrum licence that is enabled by the re-allocation declaration, use more than an aggregate of 1 GHz of the 26 GHz band in each geographic area ('designated area') in which spectrum licences are to be allocated.

The Determination sets out allocation procedures that are consistent with the spectrum licence limits direction. These procedures include a requirement on each applicant to identify any relevant associates and provisions prohibiting the allocation of spectrum that would cause a successful bidder to exceed the allocation limits.

#### *Spectrum access charges direction*

On 19 October 2020, the Minister gave the ACMA a direction under subsection 14(1) of the *Australian Communications and Media Authority Act 2005* (the ACMA Act) and subsection 294(2) of the Act, being the *Radiocommunications (Spectrum Access Charges—26 GHz Band) Direction 2020* (the spectrum access charges direction), directing the ACMA to permit payment of spectrum access charges in instalments. The circumstances and reasons for making the spectrum access charges direction are set out in the explanatory statement to that direction.

The effect of the spectrum access charges direction is that the ACMA must in the Determination allow winning bidders to pay their spectrum access charge in instalments, or by an upfront payment.

#### *Overview*

The Determination sets out in detail the procedures that will be used to conduct the auction. These procedures include the requirements and responsibilities of applicants, bidders and the ACMA throughout all stages of the allocation process. The Determination also sets out rules to deter collusive behaviour, and sets potential consequences for breaching those or other parts of the Determination.

The allocation procedures describe the necessary application and registration processes for persons to become eligible to participate and bid for lots in the auction. This process includes the submission of required documentation and the payment of an application fee, as well as the making of an eligibility payment or the provision of a deed of financial security (or both).

Rules governing how applicants can bid on spectrum in the auction are set out in the Determination. The ACMA will auction spectrum in the 26 GHz band divided into the lots described in the *Radiocommunications Spectrum Marketing Plan (26 GHz Band) 2020* (the Marketing Plan). Each lot is defined by a geographic boundary and frequency bandwidth.

The auction will be conducted via a secure online system using the ESMRA auction format.

The ESMRA auction for the 26 GHz band will be conducted in 3 stages:

1. **Primary stage**—The primary stage consists of a pre-bidding phase, followed by a series of clock rounds for bidding. Before the auction starts, the auction manager enters in the auction system the provisional start demands and provisional minimum spectrum requirements (MSR) for each product, as specified by bidders in their eligibility nomination forms. During the pre-bidding phase, bidders may confirm or change their provisional start demands and provisional MSRs in the auction system.

The clock rounds progress according to a clock function. All products are offered simultaneously for bidding during these rounds. In each round, bidders indicate their demand for generic lots of each product. A bid is a request to change the bidder's demand at a particular price point. In each clock round, bidders may make one bid per available product. Therefore, in the first round, bidders indicate whether they wish to change their demand as nominated in the pre-bidding phase, and the price point at which they wish to change their demand.

Bids may be changed at any time until the nominated end time of the round. At the end of each round, the auction system processes all bids in accordance with the processing algorithm set out in Schedule 1 to the Determination. If demand exceeds supply for any product, the auction continues to the next round. The primary stage concludes when there is no excess demand across all products. Detailed rules about the primary stage are set out in Schedule 1 to the Determination.

There are 12 x 200 MHz generic lots being offered in 24 regions. In Greater Perth, Margaret River and Hobart, there are 24 x 100 MHz generic lots being offered, with each area divided into a lower band product (25.1–27 GHz) and an upper band product (27–27.5 GHz), with 19 x 100 MHz generic lots for the lower band product and 5 x 100 MHz generic lots for the upper band product. The Greater Perth area has a Greater Perth Lower region for the lower band product and a Greater Perth Upper region for the upper band product. The Margaret River area has the same region for its lower band and upper band products. The Hobart area also has the same region for its lower band and upper band products.

2. **Secondary stage**—After the primary stage has finished, if any single generic lot remains unallocated in any product (residual lots), a secondary stage commences in relation to those lots in accordance with the procedures set out in Schedule 2 to the Determination. These residual lots typically arise from operation of the MSR feature, but may also result from insufficient bidder demand. The secondary stage uses the Simple Clock Auction (SCA) format with a simple ascending bid methodology. All residual lots will be offered concurrently within this stage. The starting prices for the secondary stage are the same as for the primary stage. The secondary stage concludes when the final round has concluded for each residual lot available for bidding in the secondary stage.
3. **Assignment stage**—The purpose of the assignment stage is to assign specific frequencies within the 26 GHz band to the allocated lots. Successful bidders from the primary and secondary stages are invited to submit bids on a number of frequency range options determined by the auction manager, using the auction software in accordance with the procedures set out in Schedule 3 to the Determination. For example, in the case of 3 successful bidders where there is no unallocated spectrum for a product, each may bid on whether their holding is to be the low, middle or high allocation within the frequency range.

### *Related instruments*

Other legislative instruments affect the re-allocation of spectrum in the 26 GHz band. These instruments provide additional information about the auction and the spectrum licences that will be available for allocation.

Under section 39A of the Act, a Marketing Plan for the 26 GHz band has been prepared. This Marketing Plan specifies the spectrum available and the conditions that will apply to its use under spectrum licences. The technical conditions to be included in spectrum licences allocated in accordance with the Marketing Plan and the Determination are drawn from the ACMA's technical framework for the 26 GHz band, as set out in the following legislative instruments:

- > the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters — 26 GHz Band) 2020*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers — 26 GHz Band) 2020*;
- > the *Radiocommunications (Unacceptable Levels of Interference — 26 GHz Band) Determination 2020*.

A provision-by-provision description of the Determination is set out in the notes at Attachment A.

### *Spectrum reform*

The ACMA notes that any allocation process commencing under the provisions of the current Act will use those provisions applying throughout the allocation and issue of spectrum licences. This maximises regulatory certainty for participants. The 26 GHz band allocation will be conducted under the current Act and spectrum licences will be issued for a maximum term of 15 years. Lot ratings and starting prices for lots of each product have been set based on this position.

On the day the Determination was made, the *Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020* (the Bill) had been introduced to, but not passed by Parliament. If the Bill is passed by Parliament, its provisions may affect matters set out in the Determination. Any transitional arrangements that apply will be implemented, where applicable, after the auction.

Matters currently in the Act that may be affected by the Bill include the duration of a spectrum licence and the re-allocation period. The Bill proposes licences be extended from a maximum of 15 to 20 years, with clearer licence renewal processes.

In the Bill, the arrangements for apparatus licences are also proposed to be aligned with spectrum licences to the extent possible.

The 3-year re-allocation period means that arrangements applying to incumbent apparatus licensees in the 26 GHz band may be affected by legislative change. In any transition process, the ACMA expects that the intent of the re-allocation period will continue to be preserved, that is, apparatus licences will continue to authorise incumbent licensees to operate until the end of the re-allocation period, should licensees choose to do so.

### **Documents incorporated by reference**

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

- > the *Radiocommunications Act 1992*;
- > the spectrum licence limits direction;
- > the spectrum access charges direction;

- > the *Acts Interpretation Act 1901*;
- > the *A New Tax System (Australian Business Number) Act 1999*;
- > the *Australian Communications and Media Authority Act 2005*;
- > the *Banking Act 1959*;
- > the *Competition and Consumer Act 2010*;
- > the *Corporations Act 2001*;
- > the *Criminal Code Act 1995*;
- > the *Insurance Act 1973*;
- > the *Legislation Act 2003*;
- > the *Legislation (Exemptions and Other Matters) Regulation 2015*;
- > the Marketing Plan;
- > the *Public Service Act 1999*;
- > the re-allocation declaration;
- > the *Telecommunications Act 1997*.

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)). The Acts are incorporated as in force, from time to time, in accordance with section 10 with the *Acts Interpretation Act 1901* and subsection 13(1) of the LA. The legislative instruments listed above are incorporated as in force, from time to time, in accordance with section 6 of the Determination and subsection 14(1) of the LA.

### **Consultation on the Determination**

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

A draft version of the Determination was released for public consultation on 9 July 2020, together with the consultation paper [Draft allocation instruments for 26 GHz band \(25.1–27.5 GHz\) metropolitan and regional lots auction](#). The consultation closed on 10 August 2020.

The ACMA received a total of eight written submissions to the consultation. The ACMA had regard to the views of stakeholders during the revision of the Determination.

Four submissions expressed concerns with the ACMA's proposed lot configuration of 12 x 200 MHz generic lots, proposing lot sizes of 100 MHz or 400 MHz. In response, the ACMA altered the lot size to 100 MHz in 3 areas (Greater Perth, Margaret River and Hobart) and divided those areas into lower (25.1–27 GHz) and upper (27–27.5 GHz) band products. In Greater Perth, Margaret River and Hobart, bidders could win lots in both the lower and upper products. To ensure contiguous holdings, the Determination includes rules for these lots for the purpose of ensuring contiguity of a frequency range in the assignment stage.

Two submissions also proposed the use of the MSR feature to ensure viable spectrum holdings. In response, the ACMA has included in the Determination an optional MSR feature for each product in the primary stage. As a consequence of including the MSR in the primary stage, the Determination also provides for a secondary stage (if required) for auctioning any single lot of a product remaining unallocated from the primary stage. As a result, the affiliates check during the auction is carried out after the conclusion of the secondary stage (if there is one) or after the conclusion of the primary stage (if there is no secondary stage).

Three submissions expressed support for an instalment payments option for the spectrum access charge (i.e. the winning price). After consultations closed, the Minister issued the spectrum access charges direction, which directed the ACMA to permit an instalment payments option. The ACMA amended the Determination to implement that direction, as set out in Schedule 4 to the Determination.

One submission expressed concerns regarding the binding nature of start demands in the eligibility nomination form. Some participants in the 3.6 GHz auction in 2018 expressed similar concerns in post-auction reviews with the ACMA. Therefore, the ACMA has introduced a pre-bidding phase in the primary stage, which enables bidders to confirm or change their provisional start demands and provisional MSRs shortly prior to round one of the primary stage.

In accordance with subsection 60(14) of the Act, the ACMA consulted with the Australian Competition and Consumer Commission (ACCC) about whether the procedures in the Determination should include a requirement that the ACMA give specified information to the ACCC and, if so, the nature of that requirement. The ACMA consulted with ACCC staff in June 2020. Section 74 has been included in the Determination to reflect the possible interest of the ACCC in the auction process.

### **Regulatory impact assessment**

A preliminary assessment of the proposal to make the allocation instruments was conducted by the Office of Best Practice Regulation (OBPR), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement would be required for the allocation of spectrum licences in the 26 GHz band. OBPR determined that the proposed regulatory change is minor or machinery in nature and therefore verified that no further regulatory impact analysis was required (OBPR reference number 25951).

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

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

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

### **Overview of the instrument**

On 18 October 2019, following a recommendation from the ACMA, the Minister made the re-allocation declaration. This re-allocation declaration provided that specified spectrum in the 26 GHz band, within certain identified geographic areas within Australia, is to be re-allocated by issuing spectrum licences.

Under subsection 60(1) of the Act, the ACMA must determine the procedures for allocating spectrum licences by auction, tender or for a pre-determined or negotiated price. The Determination is made, in substantial part, under that provision. The Determination sets out the procedures to be applied in allocating spectrum licences in the 26 GHz band. These licences will be allocated in a 3-stage auction process using the ESMRA format. To the extent that the Determination is made under subsection 60(1) of the Act, it is not a disallowable instrument (see item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Under subsection 294(1) of the Act, the ACMA may also make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the time when spectrum access charges are payable. The Determination fixes the spectrum access charges payable by the persons to whom spectrum licences in the 26 GHz band are allocated, by reference to the winning prices in the auction. To the extent that the Determination fixes the spectrum access charges payable

by licensees for issuing spectrum licences as a result of the auction, and the timing of such payments, the Determination is made under subsection 294(1) of the Act. To the extent that the Determination is made under subsection 294(1) of the Act, it is a disallowable instrument. Provisions which are made under section 294 of the Act are identified in the Determination and in the notes in Attachment A.

Subject to compliance with the allocation limits required to be included in the Determination by the spectrum licence limits direction, any person may apply to participate in the auction to be held in accordance with the Determination.

### **Human rights implications**

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

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

### **Conclusion**

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

**Notes to the Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020**

**PART 1—PRELIMINARY**

**Section 1 Name of instrument**

This section provides for the Determination to be cited as the *Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020*.

**Section 2 Commencement**

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

The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

**Section 3 Authority**

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

**Section 4 Interpretation**

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

This section also provides that the range of numbers that identifies 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. It also provides that a reference to time in the Determination is a reference to the legal time in the Australian Capital Territory.

**Section 5 Lots and products**

This section defines terms and phrases that relate to the description of units of spectrum (lots) and groups of lots (products) that are being offered in the auction. There are 30 products being offered in the auction. The 30 products cover 28 geographic areas—9 metropolitan areas (which includes 2 overlapping areas for the Greater Perth area) and 19 regional areas. In 24 areas, a single product of 12 x 200 MHz lots is offered. In each of the Greater Perth, Margaret River and Hobart areas, a lower band product of 19 x 100 MHz lots (25.1–27 GHz) and an upper band product of 5 x 100 MHz lots (27–27.5 GHz) are offered.

**Section 6 References to other legislative instruments, and to other instruments or writing**

This section outlines that in the Determination, unless the contrary intention appears, a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time, and a reference to an instrument or other writing (other than a legislative instrument) is a reference to that instrument or writing as in force or existing from time to time.

**Section 7 Giving documents to the ACMA**

This section sets out requirements for giving documents to the ACMA, including the approved formats for those documents. These requirements apply to any documents being given to the ACMA for the purpose of the allocation process under the Determination. They are intended to work primarily with sections 28 (Making an application), 34 (Requirements for new application), section 39 (Giving of updated documents and updating financial security) and 41 (Making a new application), among other sections.



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

This section also provides that when a person gives a deed of financial security to the ACMA, they may do so by providing one or more deeds of financial security.

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

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

#### **Section 9 Payment of amounts**

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

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

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

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

A person may make an electronic transfer using BPay or by credit card payment to pay the balance of their winning price under Schedule 4 to the Determination.

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

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

Section 9 relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

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

#### **Division 1 Allocation limits**

#### **Section 10 Interpretation**

This section defines some terms used in Part 2.

## **Section 11      Meaning of allocation limits**

This section defines how the term *allocation limits* is used throughout the Determination.

The Minister has given the ACMA a written direction under subsection 60(10) of the Act (see section 5 of the spectrum licence limits direction), which requires the ACMA to determine procedures that impose limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may in total be used by a person or members of a specified group of persons (namely, any person and that person's associates). As required by the spectrum licence limits direction, the allocation limits apply to the use of spectrum in the 26 GHz band.

The allocation limits apply to the combined products, i.e. in the lower band and upper band, in each of Greater Perth, Margaret River and Hobart as if they were a single product. For example, if a bidder bids for 600 MHz of spectrum in Hobart-lower, it may only bid for up to 400 MHz of spectrum in Hobart-upper.

## **Section 12      Allocation limits**

This section sets out the allocation limits imposed in accordance with the spectrum licence limits direction. Relevantly, the allocation limits provide that no person or specified group of persons may, as a result of the allocation of a spectrum licence, use more than an aggregate of 1 GHz in each geographic area ('designated area') in which spectrum licences are to be allocated. Further detail about the allocation limits can be found in the explanatory statement to the spectrum licence limits direction.

## **Division 2      Associates, specified group of persons and affiliations**

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

This section defines the meaning of 'associate' and 'specified group of persons' for the purposes of the allocation limits.

An associate means:

- > in relation to a person that is a body corporate—a director or secretary of the body, a related body corporate, a director or secretary of a related body corporate, or an individual with at least 15% of the voting power or issued shares in the body;
- > in relation to a person that is an individual—the individual's spouse or de facto partner, a body corporate in which the individual has at least 15% of the voting power or issued shares, a body corporate of which the individual is a director or secretary, or a related body corporate of such a body corporate of which the individual is a director or secretary;
- > a person that is a party to a 'relevant agreement' with another person for the use or acquisition of a spectrum licence in relation to part of the spectrum in the 26 GHz band.

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

A specified group of persons means a person and all the associates of that person. A specified group of persons can also be any 2 or more groups of a person and all associates of that person, that have at least one member in common.

However, an individual is taken not to be a member in common between 2 or more groups that are comprised of a person (relevant person) and the associates of that relevant person where all of the following apply:

- a) the individual is providing services as a company secretary (company secretarial services) to one or more related bodies corporate of the relevant person in each of the groups;
- b) the individual is providing the company secretarial services through a person or entity (third party service provider) that:
  - (i) is not in any of the groups; and
  - (ii) carries on a business for the provision of professional services, including company secretarial services; and
  - (iii) has, in the ordinary course of carrying on that business, been separately and independently engaged by an entity within each of those groups, under a contract or other legally binding arrangement, to provide the company secretarial services;
- c) the individual is not, otherwise than by reason of providing the company secretarial services, an associate of any of the relevant persons;
- d) each of the related bodies corporate to which the individual is providing the company secretarial services is incorporated outside Australia.

The Determination adopts these definitions from the spectrum licence limits direction.

#### **Section 14 Affiliation between applicants or bidders**

This section provides that 2 applicants or bidders will be taken to be affiliated if the applicants or bidders are in the same specified group of persons. The definition of specified group of persons means that 2 applicants or bidders will be affiliated if they have an associate in common. An example would be where 2 applicants or bidders have a director in common. However, an individual is taken not to be a 'member in common' if the conditions relating to company secretarial services specified in section 13 apply.

#### **Section 15 Information relevant to considering whether applicants or bidders are affiliated**

This section sets out the matters that the ACMA must take into account in considering whether an affiliation exists between 2 or more applicants or bidders, namely, by having regard to certain documents and information given to the ACMA by applicants and bidders under the Determination. The ACMA may also have regard to any other information it considers relevant in determining information about affiliations.

### **PART 3—CONFIDENTIALITY**

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

The definition of the term *confidential information* forms the basis of the confidentiality rules imposed by this Part. The definition includes information that could give rise to collusion or price-signalling (both deliberate and inadvertent) if disclosed, such as information about a bid, or about proposed bids of an applicant or bidder, an applicant's or bidder's bidding strategy, or the amount an applicant or bidder is willing to pay for a lot or group of lots in the auction. It also includes documents an applicant or bidder has given to the ACMA for the purpose of the auction (e.g., their application form) and information provided to a bidder by the ACMA for the purposes of participating in the auction. More generally, the definition also covers any information that, if disclosed, could be expected to affect or be capable of affecting an applicant's or bidder's activity prior to or during the auction, or that could affect the outcome of the auction.

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

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

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

Information that would otherwise fall within the definition of confidential information but is already publicly available, and was not disclosed by a breach of this section, may also be disclosed.

## **Section 18      Duration of confidentiality obligation**

In order to protect against collusion and price-signalling (whether deliberate or inadvertent) at all stages of the allocation process, the rules on confidential information apply to each applicant, bidder and related person or contractor with knowledge of the applicant's, or bidder's, confidential information. This section sets out when, after the allocation process, the confidentiality obligation for an applicant or bidder, and for a related person or contractor of an applicant or bidder, will end. An applicant, or bidder and their related persons or contractors, will be released from the confidentiality obligation when one of the circumstances set out in this section takes place:

- > an applicant (who has withdrawn) is notified under section 63 that the applicant's confidentiality obligation is at an end; or
- > for a bidder (winning or otherwise), when the ACMA announces or publishes the auction results under subsection 69(1).

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

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

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

This section applies where the ACMA has reason to believe there has been a breach of the rules regarding the disclosure of confidential information by an applicant or bidder (or a related person or contractor of an applicant or bidder). In such cases, the ACMA must advise the applicant or bidder of the details and ask them to make submissions to the ACMA about the matter. The ACMA must set a deadline for the provision of any submissions that is no more than 5 working days after the date of the request.

The ACMA is not obliged to tell the applicant or bidder of its belief before the auction period ends but must do so as soon as practicable after the auction period ends.

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

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

The section states that a deed of confidentiality will be required from related persons, being employees of the applicant or bidder, or employees of a related body corporate of the applicant or bidder that provides services to the applicant or bidder, as well as from contractors who have knowledge of confidential information of the applicant or bidder.

The obligation to complete a deed of confidentiality under this section will not extend to a director or company secretary of an applicant or bidder, unless the director or secretary is also an employee of the applicant or bidder.

A deed of confidentiality will also not be required from a contractor of an applicant or bidder (who has knowledge of its confidential information), if the contract is for the purposes of:

- > obtaining advice relating to the auction from the contractor in their professional capacity;
- > obtaining finance to make a payment in relation to spectrum licences in the auction.

Where a related person of an applicant gains knowledge of the applicant's confidential information prior to the application deadline (or a new application deadline, if there is one), a deed of confidentiality from the related person must be submitted to the ACMA by the application deadline (or new application deadline).

## **PART 4—PROCEDURES BEFORE AUCTION**

### **Division 1 Preliminary**

#### **Section 22 Auction manager**

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

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

#### **Section 23 Setting application fee**

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

## **Section 24 Application fee and withdrawal on variation of starting prices**

This section states that the application fee to be paid under the Determination as part of the application requirements will not be refunded to an applicant or bidder, with one exception. The exception may apply if the ACMA varies the starting prices under section 37. In such a case, if an applicant withdraws its application under subsection 43(1) the ACMA will refund the application fee within 6 months of the withdrawal. In all other cases, the ACMA will not refund the application fee of an applicant who has withdrawn.

## **Division 2 Advertising the auction**

### **Section 25 Advertising of auction by the ACMA**

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

The deadlines for lodging the application form and associated documentation (application deadline) and eligibility nomination form and eligibility payment and/or deed of financial security (eligibility deadline) required to participate in the allocation process will also be included in the notice.

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

### **Section 26 Applicant information package**

The AIP is intended to give prospective participants the key information they need to decide whether to participate in the allocation process. This section specifies the information that the AIP will contain. The AIP will include the Determination, the Marketing Plan, the re-allocation declaration, the spectrum licence limits direction, and the spectrum access charges direction, which are the key instruments that provide the legal basis for the allocation process.

The AIP will also provide information, forms and documentation needed for a person to apply to be registered as a bidder, participate in the auction, and be allocated and issued spectrum licences. The AIP also advises that the eligibility deadline is the last time for withdrawal from the auction, but notes that the eligibility deadline may be extended.

To assist interested parties to better understand the contents of the AIP, this package will include an auction guide which will set out a concise summary of how the allocation will take place as well as other relevant information.

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

### **Section 27 Starting prices, lot ratings and minimum spectrum requirements**

This section provides that the ACMA must set:

- > the starting price for the lots of each product;
- > the lot rating for lots of each product;
- > the MSR options that an applicant may select for lots of a product.

The starting price is equivalent to the reserve price for the lots of each product. It will not be possible within the auction system for an applicant to place a bid for an amount below the starting price.

Starting prices relate to the spectrum access charges determined under Division 2 of Part 6 of the Determination and therefore, paragraph 1(a) of this section is disallowable under section 42 of the LA.

Lot ratings are an estimation of the relative value of the different lots on offer, measured in eligibility points. For example, a product with a lot rating of 60 is approximately 3 times more valuable than another product with a lot rating of 20. They are an important part of the efficiency of the auction because they facilitate switching demand between different products. When combined with the activity target, they reduce the opportunity for strategic bidding by requiring bidders to reveal their demand from the commencement of the auction rather than only near the end (bid spiking).

The MSR is an optional feature designed to ensure bidders are not left with an amount of spectrum that they may consider to be uneconomic. It ensures bidders who select the MSR can reduce their demand to zero lots without the risk of their bid being partially applied. For example, a bidder with an MSR of 2 lots in respect of a particular product cannot win one lot for that product.

After setting each of these amounts, the ACMA must approve an application form and eligibility nomination form to be completed by applicants as part of the registration process. The ACMA must publish each amount set under this section, and the approved application and eligibility nomination forms, on its website as soon as practicable after the ACMA publishes a notice of the auction under subsection 25(1).

The eligibility nomination form must include a guide for applicants to assist them to specify their provisional start demand and provisional MSR for each product, as well as calculate their maximum eligibility points. The auction manager enters this information into the register after the eligibility deadline (or extended eligibility deadline, if there is one). During the pre-bidding phase, the same information is entered into the auction system and registered bidders are provided with an opportunity to confirm or change their provisional start demands and provisional MSRs in the auction system, which become binding at the conclusion of the pre-bidding phase.

### **Division 3      Application to participate in the auction**

#### **Section 28      Making an application**

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

- > give the ACMA a completed application form;
- > give the ACMA a signed deed of acknowledgement completed by the applicant, which specifies that the applicant agrees to be bound by the terms of the Determination;
- > give the ACMA a signed deed of confidentiality completed by the applicant; and
- > pay the application fee set by the ACMA.

After the application deadline and by the eligibility deadline, the applicant must also give the ACMA a completed eligibility nomination form which specifies:

- > the number of lots of each product desired by the applicant as valid provisional start demands of the applicant, at the starting price for the lots of the product; and
- > the maximum eligibility points of the applicant, based on those specified provisional start demands; and
- > whether they select or do not select a provisional MSR for each product.



The applicant must also make an eligibility payment of an amount determined in accordance with section 36 to the ACMA on behalf of the Commonwealth, or give the ACMA on behalf of the Commonwealth a deed of financial security for the amount, or a combination of both.

Copies of the application form, eligibility nomination form and the deeds required are provided in the AIP.

If an applicant has not submitted a completed eligibility nomination form and made an eligibility payment or given a deed of financial security (or a combination of both) to the ACMA by the eligibility deadline, the applicant is taken to have withdrawn its application.

Instructions on how to lodge documents are in section 7. Instructions on how to make payments are in section 9.

An applicant may also lodge an updated document at any time prior to the relevant deadline for that document (either application deadline or eligibility deadline), but not afterwards.

If a deed of financial security is given to the ACMA by email, the original deed must be received by the ACMA no later than 3 working days after the eligibility deadline (or a later time if agreed by the ACMA) for the application to be valid.

### **Section 29 Provisional start demand validity rules for application**

For the purposes of making a valid application, a provisional start demand of an applicant for lots of a product is valid if both the total size of the lots of the product for the start demand does not exceed the allocation limits that apply in relation to the applicant and the relevant product, and the number of lots for the start demand of the product is not greater than the supply of the product.

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

This section requires an applicant to provide the ACMA with correct information, if it becomes aware that information in its application has changed or is incorrect. The auction manager may correct the information in the application if the auction manager is satisfied that the information is incorrect, such as where it contains a clerical error or an obvious mistake or omission.

### **Section 31 Applicant to make statutory declaration**

To ensure that affiliated applicants do not participate in the auction as separate bidders, the ACMA has included procedures to identify affiliated applicants before the commencement of the auction. This provision sets out the requirements that will assist the ACMA to identify whether any 2 or more applicants are affiliated.

After the application deadline, the ACMA must provide each applicant with a list of all other applicants, and the persons those applicants have identified as their associates. The information distributed will be based on details provided as part of each person's application. The application form includes a requirement for applicants to provide information about themselves as well as their associates.

The ACMA will ask each applicant to identify from the list provided by the ACMA whether they are affiliated with any other applicant. Under this section, applicants must then make a statutory declaration to the ACMA stating whether they are affiliated with another applicant and, if so, giving details of that affiliation. The ACMA will state a deadline by which the statutory declaration must be received, which will be at least 10 working days after the date of the ACMA's request.

Where the ACMA is satisfied that an affiliation exists between 2 or more applicants, the applicants will be required to choose one of the options available under section 33 before their application(s) will be considered further.

### **Section 32 Failure to give statutory declaration**

This section provides if an applicant fails to provide a statutory declaration in accordance with section 31, the applicant is taken to have withdrawn from the auction.

### **Section 33 Procedure if ACMA satisfied applicants are affiliated**

This section sets out the options available to a group of 2 or more applicants where the ACMA is satisfied that they are affiliated. The aim of this section is to assist applicants that are affiliated by providing them with some options that they may use to resolve any affiliation so as to enable their participation in the auction.

Under this section, the ACMA must write to each affiliated applicant and explain the reasons why it considers them to be affiliated. The ACMA must also tell all affiliated applicants of the options available to them under this section. Affiliated applicants are required to notify the ACMA in writing within 10 working days of receiving notification from the ACMA of which option they propose to take. The options available to affiliated applicants under this section are:

- (a) to withdraw the applications of all the affiliated applicants and submit a new application, as a single new applicant, under section 34; or
- (b) to withdraw the applications of all but one of the affiliated applicants.

Under this section, all of the affiliated applicants are taken to have withdrawn their applications if the applicants do not respond to the ACMA within 10 working days of the notification. An affiliated applicant is also taken to have withdrawn if it is one of a remaining group of 2 or more affiliated applicants who have not informed the ACMA of their intention to withdraw.

### **Section 34 Requirements for new application**

This section provides an opportunity for affiliated applicants to participate in the auction as a single bidding entity in a manner that will ensure that the allocation limits expressed in section 12 are not exceeded. It allows one or all of a group of affiliated applicants who have withdrawn their applications under subsection 33(1) to make a new application as a single applicant. It sets out the process and timeframe for lodging a new application. A new application made under this section must be accompanied by payment of an additional application fee. New applications can only be lodged by a body corporate whose only members are one or more of the group of affiliated applicants.

New applicants will have 10 working days from the time that they are notified of being an affiliated applicant to submit a completed application form and pay the application fee to the ACMA.

After receiving the application form and application fee, the ACMA will give each applicant, including the new applicant, updated details of all other applicants who have not withdrawn and their associates.

New applicants will then have 3 working days (or a longer period if the ACMA agrees) from the time they are given the updated details of all applicants and their associates to submit:

- > a completed deed of acknowledgement;
- > a completed deed of confidentiality; and
- > a completed statutory declaration stating that the new applicant is not affiliated with any other applicant in the updated list of applicants.

The new applicant must also give the ACMA a completed eligibility nomination form, eligibility payment or deed of financial security or a combination of both by the eligibility deadline (or extended eligibility deadline, if there is one), or a later time if the ACMA agrees to a longer period. If a deed of financial security is given to the ACMA by email, then the original deed must be received by the ACMA within 3 working days of the deadline (unless the ACMA agrees to a longer period).

The ACMA can only accept a new application if it is satisfied that the new applicant is not affiliated with any other applicant who has not withdrawn, including another new applicant.

**Division 4      Maximum eligibility points, provisional minimum spectrum requirements and financial security**

**Section 35      Maximum eligibility points and selecting provisional minimum spectrum requirements**

This section specifies that the maximum number of maximum eligibility points that an applicant may nominate in its completed eligibility nomination form (or updated eligibility nomination form) is the total of the eligibility points of all lots of each product up to its allocation limits.

It also provides that an applicant may select a provisional MSR in its eligibility nomination form from the options set by the ACMA under paragraph 27(1)(c). If no provisional MSR is selected for a product, the applicant is taken to have selected no MSR for that product.

**Section 36      Eligibility payment or deed of financial security required for maximum eligibility points**

This section describes how an applicant secures their maximum eligibility points by making an eligibility payment, or providing a deed of financial security, or a combination of both, by the eligibility deadline (or extended eligibility deadline, if there is one). The amount to be paid or secured, in relation to an applicant, is 10 percent of the value of the applicant's provisional start demands at the starting prices.

A situation may arise where the applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount less than the amount required to secure their nominated lots. Where this occurs, the ACMA will notify the applicant. Applicants have until the eligibility deadline (or extended eligibility deadline, if there is one), or 3 working days from the date they are notified by the ACMA of the underpayment (whichever is later), to provide the ACMA with an additional eligibility payment or deed of financial security to make up the balance to secure the maximum eligibility points specified in their eligibility nomination form.

If an underpayment remains after this period, the ACMA will reduce the applicant's maximum eligibility points and start demands to a level commensurate with the eligibility payment made or the deed of financial security given (or both). Subsections (4) to (6) describe how the ACMA will calculate such a reduction and requires the ACMA to tell an applicant in writing if the ACMA has reduced their maximum eligibility points and provisional start demands, or if the applicant is taken to have withdrawn its application, as a result of this section.

Under subsection (7), a deed of financial security given to the ACMA must be executed by an authorised deposit-taking institution within the meaning given by the *Banking Act 1959* or a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973* or a Lloyd's underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*. If a deed of financial security is executed by a person acting under a power of attorney, a copy of the power of attorney must be given to the ACMA

An applicant is considered to have withdrawn if the applicant fails to make an eligibility payment or give a deed of financial security before the eligibility deadline or extended eligibility deadline (if there is one), or the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in subsection (7). The ACMA must tell the applicant if it is taken to have withdrawn its application.

## **Division 5      Extension of deadlines and related requirements**

This Division provides for the ACMA to vary a starting price in the auction and sets out the process for doing so. The ACMA may also vary a lot rating if it varies a starting price. The Division describes how existing applicants may update their application documents or withdraw from the auction without penalty, and how new persons may apply to participate in the auction. It also describes the new application deadline and extended eligibility deadline which will apply. Additionally, it sets out the process for the ACMA to check that any new applicants are not affiliated with existing applicants or other new applicants for the purpose of enforcing the allocation limits, similar to the provisions in sections 31-34.

### **Section 37      Varying starting prices, lot ratings and deadlines**

This section provides for the ACMA to vary a starting price for lots of a product in the auction, and, if it does so, to also vary a lot rating. The ACMA may do so up to 5 working days before the eligibility deadline. Starting prices relate to the spectrum access charges determined under Division 2 of Part 6 of the Determination and therefore, paragraph 1(a) of this section is disallowable under section 42 of the LA.

If the ACMA varies a starting price, it must set a new application deadline, being 20 working days after the date of the variation, and an extended eligibility deadline, being at least 20 working days after the original eligibility deadline. This provides an opportunity for existing applicants to update or withdraw their applications, and for new applicants to apply to participate in the auction.

The ACMA must approve an updated eligibility nomination form that contains the varied starting price(s) and lot rating(s).

As soon as possible after varying a starting price, the ACMA must publish information on its website about the varied starting price(s), lot rating(s), new application deadline and extended eligibility deadline, and the updated eligibility nomination form, with a guide to completing it and giving it to the ACMA.

### **Section 38      Notice of updated documents**

This section requires the ACMA, if it varies a starting price, to notify existing applicants that:

- > they must give the ACMA an updated eligibility nomination form before the extended eligibility deadline;
- > if necessary, they may make an additional eligibility payment or update their deeds of financial security before the extended eligibility deadline;
- > if necessary, they may update their application form before the new application deadline.

### **Section 39      Giving of updated documents and updating financial security**

This section sets out the requirements for existing applicants after the ACMA notifies them that it has varied a starting price.

Applicants must give the ACMA an updated eligibility nomination form by the extended eligibility deadline, specifying their provisional start demands, provisional MSRs and maximum eligibility points. If they do not do so, an applicant is taken to have withdrawn their application.

An applicant may make an additional eligibility payment or update a deed of financial security before the extended eligibility deadline (e.g. by replacing or supplementing a deed of financial security). If the deed is given by email to the ACMA, the original deed must be received within 3 working days after the extended eligibility deadline, unless the ACMA agrees to a later time. An applicant may also give the ACMA an updated application form: see subsection 39(4).

#### **Section 40 Notice inviting new applicants to the auction**

This section requires the ACMA to publish a notice inviting persons who are not already applicants to participate in the auction if it varies a starting price. The notice must state:

- > the new application deadline, before which the ACMA must receive from new applicants:
  - completed application forms;
  - deeds of acknowledgement;
  - deeds of confidentiality;
  - the application fee;
- > the extended eligibility deadline, before which the ACMA must receive:
  - completed updated eligibility nomination forms;
  - an eligibility payment or a deed of financial security, or a combination of both;
- > that applications may only be withdrawn before the extended eligibility deadline;
- > that the application information package (with changes) can be obtained at the ACMA website.

If a matter in the notice changes, the ACMA must publish another notice giving details of the change.

The ACMA may publish the information required by section 40, or other information about the auction, by additional methods.

#### **Section 41 Making a new application**

This section sets out how a person who is not already an applicant may apply to participate in the auction, if the ACMA has varied a starting price. This includes any applicants who have already withdrawn from the auction.

In order to apply to participate in the auction, a person must give the ACMA a completed application form, deed of acknowledgment, deed of confidentiality and pay the application fee before the new application deadline. The applicant may update its application documents at any time until the new application deadline.

The new applicant must give the ACMA a completed updated eligibility nomination form and make an eligibility payment or give a deed of financial security, or a combination of both, to the ACMA before the extended eligibility deadline. If the new applicant does not fulfil these requirements, it is taken to have withdrawn its application. If the deed of financial security is given to the ACMA by email, the original deed must be received within 3 working days after the extended eligibility deadline (unless the ACMA agrees to a longer period). The applicant may update its application and eligibility documents at any time before the extended eligibility deadline.

#### **Section 42 Statutory declarations and affiliations**

This section describes how the ACMA checks that new applicants are not affiliated with existing applicants or other new applicants for the purposes of enforcing the allocation limits, similar to the provisions in sections 31-34.

If the ACMA receives a new application, after the new application deadline it must:

- > provide all applicants with updated details about the identity of all other applicants and their associates;
- > ask each applicant to make a statutory declaration stating whether it is affiliated with another applicant and, if so, the details of that affiliation.

The ACMA must set a deadline for receiving the statutory declaration, which is at least 10 working days after the date of the request. If an applicant does not make the statutory declaration by the

deadline, it is taken to have withdrawn its application.

If the ACMA is satisfied that 2 or more applicants are affiliated, it will apply the procedures in sections 33 and 34.

## **Division 6      Withdrawal of applicant**

### **Section 43      Withdrawal of applicant**

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

An applicant can withdraw from the allocation process any time before the eligibility deadline or extended eligibility deadline (if there is one), by giving the ACMA notice in writing. An applicant who has withdrawn will not be re-admitted to the auction and cannot be allocated spectrum under the Determination. However, if the ACMA varies a starting price under subsection 37(1), a withdrawn applicant may apply to become a registered bidder.

Any eligibility payment amount paid by an applicant who withdraws before the eligibility deadline or extended eligibility deadline (if there is one), or who is taken to have withdrawn under other sections of the Determination, will be refunded within the period specified in subsection 63(2), subject to sections 75 and 77 of the Determination.

## **Division 7      Registration of bidders**

This Division sets out the obligations on the ACMA to maintain a register of bidders and explains the procedure for bidders to be registered. It also describes the information that bidders will be provided about the auction system once they are registered.

### **Section 44      Register of bidders**

This section requires the ACMA to maintain an electronic register of bidders and lists the information the register must contain for each bidder. It also requires the ACMA to keep details on the register up-to-date if advised by a bidder or it otherwise becomes aware of any incorrect information.

### **Section 45      Registration process**

This section sets out the following requirements for a person to be registered as a bidder in the auction:

- > the later of the eligibility deadline or extended eligibility deadline (if there is one) has passed;
- > the person has made a valid application;
- > the person has made an eligibility payment or given the ACMA a deed of financial security, or a combination of these;
- > the deed of financial security is executed by a person mentioned in subsection 36(7);
- > the person has not withdrawn or is not taken to have withdrawn.

This section also requires the ACMA to notify an applicant that it is registered as a bidder after the eligibility deadline or extended eligibility deadline (if there is one). At that time, the ACMA will provide bidders with the contact details for the ACMA, and a copy of their information recorded in the register for the bidders. Bidders will also receive information about how to:

- > access and use the auction system;
- > participate in the pre-bidding phase;
- > make bids during the auction;

- > submit a bid by alternative methods if they are unable to use the auction system during the auction.

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

#### **Section 46 Bidders to notify ACMA if register incorrect**

The section provides that a bidder has an ongoing responsibility to tell the ACMA if any of the information about the bidder or its associates on the register of bidders is incorrect. If any information is incorrect, the bidder must immediately give the ACMA the correct information.

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

#### **Division 8 Preparation for bidding and scheduling rounds of the auction**

This Division requires the ACMA to give registered bidders an opportunity to trial the auction system prior to auction commencement, requires bidders to store auction system information securely, and sets out the procedures for scheduling auction rounds.

#### **Section 47 Preparation for bidding**

This section provides that the ACMA will give each bidder an opportunity to trial the auction system prior to the start of the auction.

#### **Section 48 Security of the auction**

This section requires bidders to ensure that the security of the auction system is maintained. A bidder must keep secure any information and items provided to the bidder for the purpose of accessing the auction system. If such items are lost or stolen, a bidder must immediately notify the ACMA.

#### **Section 49 Auction rounds**

This section sets out the requirement to schedule the rounds of the auction for the primary stage, secondary stage and assignment stage. 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 paragraph 50(1)(a).

#### **Section 50 First and second clock rounds and pre-bidding phase before first clock round**

This section outlines the requirement that, after the later of the eligibility deadline or extended eligibility deadline (if there is one), 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. The auction manager must also set the start date and start time of the pre-bidding phase, which must be at most 48 hours before the first clock round of the primary stage, and last for at least 3 hours.

At least 10 working days before the start date of the first clock round, the auction manager must notify bidders of the start date and start time of the first and second clock rounds of the primary stage, and the start date and start time of the pre-bidding phase.

### **PART 5—AUCTION PROCEDURES**

#### **Division 1 Procedures to be applied**

This Division outlines procedures for conducting the auction, special rules if only one bidder participates, the auction manager's powers and enforcement of allocation limits during the auction period. Detailed rules for bidding and bid processing can be found in Schedules 1, 2 and 3 to the Determination.

## **Section 51 Auction stages**

This section outlines details of the 3 stages of the auction, the primary stage, the secondary stage and an assignment stage.

The primary stage is made up of 3 components.

- 1) Pre-bidding phase—The auction manager enters into the auction system the provisional start demands and provisional MSRs specified by bidders in their eligibility nomination forms. During the pre-bidding phase, bidders have the opportunity to confirm or change their provisional start demands and provisional MSRs in the auction system. These selections are then final and binding.
- 2) Clock rounds—The auction manager then conducts one or more auction clock rounds for the making of bids on lots of a product, and provides the results of each clock round after it is completed.
- 3) Final results determination—When all the clock rounds have been completed and the final demands for the lots of each product allocated to a primary winner and the associated primary prices have been determined, the final results are posted.

The secondary stage may be required to auction a single lot of a product after completion of the primary stage. That is, a lot of a product will only be offered in the secondary stage if it is a single unallocated lot of that product from the primary stage. If no single lots remain unallocated from the primary stage or there are no eligible bidders, the secondary stage is not required. The allocation limits continue to apply in the secondary stage. A bidder who has selected to have an MSR for a product and does not win at least that number of lots of spectrum of that product during the primary stage, will not be permitted to participate in the secondary stage (as the bidder does not meet the MSR test for the secondary stage). Eligibility points are not applicable to the secondary stage, since there is no activity rule or ability to switch demand between products.

The assignment stage is made up of one or more assignment rounds for the making of bids for the assignment of frequency ranges to lots of a product that were allocated in the primary stage or secondary stage. After each assignment round is completed, the winning assignment bids for the frequency ranges assigned to the lots of each product so allocated and the associated assignment prices are determined. The total assignment price is determined after all assignment rounds are completed.

## **Section 52 Procedures if only one bidder**

This section relates to the situation where there is only one bidder participating in the auction. The ACMA must notify the bidder as soon as reasonably practicable after the eligibility deadline or extended eligibility deadline (if there is one), that it is the only bidder, and that the procedures in this section apply. Following bidder notification, the auction manager will conduct the pre-bidding phase and 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 (subject to its eligibility points). As soon as possible after the primary stage is completed, the assignment stage will be conducted to enable the bidder to indicate the frequency ranges the bidder wishes to have assigned. The assignment prices in this case will be zero.

## **Section 53 Rounds of the auction**

This section provides that the rounds of the primary stage, secondary stage and assignment stage will be conducted in accordance with the rules set out, respectively, in Schedules 1,2 and 3 to the Determination.

The clock rounds for the primary stage of the auction are to be conducted in accordance with the rules in Schedule 1. The rounds for the secondary stage of the auction, if required, are to be conducted in



accordance with the rules in Schedule 2. The assignment rounds for the assignment stage of the auction are to be conducted in accordance with the rules in Schedule 3.

#### **Section 54 Auction manager’s discretion to accept entries and bids**

This section recognises that during the auction, unanticipated circumstances may arise that prevent a bidder from being able to use the auction system to submit a bid for a round in the primary stage, secondary stage or assignment stage, or to make an entry in the pre-bidding phase of the primary stage. For example, a sudden power blackout may cut a bidder’s computer access to the auction system. This section gives the auction manager the discretion to permit an entry or bid to be submitted by an alternative method. Bidders will receive information about how they can submit an entry or bid if they are unable to use the auction system once they are registered under section 45.

The auction manager has discretion to permit a bidder to submit an entry in the pre-bidding phase or a bid during any of the auction stages after the bidding period for a round has ended. However, they must be satisfied that technical or communication problems have prevented the bidder from doing so during the pre-bidding phase or round in the auction. Entries or bids that have been submitted in this way will be regarded as valid entries or bids made during the pre-bidding phase or round. An entry or bid cannot be submitted after information about the outcome of the pre-bidding phase or round has been given to bidders.

#### **Section 55 Action that auction manager may take in exceptional circumstances**

Exceptional circumstances may arise that affect the auction. If the auction manager is satisfied that these have arisen, a range of actions may be taken. These actions include correcting entries made in the pre-bidding phase, the results or bidder information for the most recent round of the auction, stopping the pre-bidding phase or current round of the auction and restarting a round, cancelling the results of one or more rounds and restarting the auction from the point before those rounds, restarting the auction from the first round, or stopping the auction. These actions could occur in the pre-bidding phase or clock rounds in the primary stage, rounds in the secondary stage or assignment rounds in the assignment stage.

Examples of exceptional circumstances that could permit the auction manager to take discretionary action under this provision include significant technical difficulty with the auction system and a breach of the confidentiality obligation. These examples are not exhaustive and do not preclude other circumstances from being regarded as exceptional.

### **Division 2 Affiliations during the auction**

#### **Section 56 Affiliation between bidders during auction period not permitted**

This section provides that a bidder must not be affiliated with another bidder during the auction period (as defined in section 4). If the ACMA is satisfied that a breach of this provision has occurred, the ACMA may take action under the enforcement provisions in section 75.

#### **Section 57 Requirement to report affiliation**

Under this provision, a bidder is obliged to immediately tell the ACMA in writing if the bidder believes that it may be affiliated with another bidder during the auction period, noting the identity of the other bidder and the details of the affiliation.

#### **Section 58 Auction continues despite possible affiliation**

This section states that if the ACMA becomes aware during the auction period that 2 or more bidders may be affiliated, the auction will proceed normally and any bidders who may be affiliated are permitted to continue to participate.

### **Section 59 ACMA consideration of affiliation**

This section requires that if the ACMA forms the belief that an affiliation exists during the auction period, it must notify the affiliated bidders in writing and inform them of the basis on which it considers them to be affiliated.

If a bidder gave the ACMA information under section 57 about a potential affiliation during the auction period and the ACMA does not consider that an affiliation exists, then the ACMA must also notify that bidder of its view.

### **Division 3 Statement by primary winners and secondary winners about affiliations**

This Division ensures that the ACMA does not allocate spectrum licences that would cause a bidder to exceed the allocation limits during the auction period.

### **Section 60 Primary winners and secondary winners to make statement about affiliations**

If a potential affiliation between bidders is identified under subsection 59(1), this section requires the ACMA to take the following actions between the end of the secondary stage or primary stage (if there is no secondary stage) and the start of the assignment stage:

- > give each primary winner and secondary winner details about the identity of all other primary winners and secondary winners;
- > ask those winners to make a statement about whether a winner is affiliated with another winner and provide details of the affiliation.

The ACMA must state a deadline for the receipt of this statement at least 10 working days after the date of the request. It is noted that giving false or misleading information in such statements constitutes a serious offence under the *Criminal Code Act 1995*.

### **Section 61 Notification that winners are affiliated**

This section states that the ACMA must notify primary winners or secondary winners if it is satisfied that they are affiliated after the end of the secondary stage or primary stage (if there is no secondary stage), and the basis of that affiliation.

### **Section 62 Consequences of affiliation between winners**

This section has the effect that the ACMA will combine the total spectrum won by affiliated winners. Where the allocation of a spectrum licence for that combined spectrum would exceed the allocation limits, licences may only be allocated up to the specified allocation limits applicable to the relevant product or combined products (in the case of upper band and lower band products).

If the ACMA notifies 2 or more primary winners or secondary winners under section 61 that it is satisfied the bidders are affiliated, the ACMA must not allocate spectrum licences to the bidders that would exceed the allocation limits applicable to a product or combined products (in the case of upper band and lower band products).

Primary winners or secondary winners who have been so notified remain subject to the allocation limits applicable to the relevant product or combined products set out in section 12. This means that the ACMA may only allocate licences to those affiliated winners up to the allocation limits applicable to the relevant product or combined products.

In these circumstances, affiliated bidders may provide a direction to the ACMA specifying how the spectrum is to be allocated between them within the allocation limits applicable to the relevant product or combined products. Such a direction must be given jointly by the affiliated bidders. If no direction is provided within 5 working days after the ACMA notified the bidders of the affiliation, the ACMA may, for any part of the spectrum where the lots won by the bidders exceed the allocation

limits applicable to the relevant product or combined products, choose at its discretion how to allocate spectrum to each bidder up to the allocation limits. Any spectrum not allocated, because allocating it would be in excess of the allocation limits applicable to the relevant product or combined products, will be treated as unallocated. The winning bidders must still pay the full balance of the winning price:

- > for all the lots allocated in the primary stage or secondary stage, despite receiving a smaller allocation as a result of this section; and
- > for all frequency ranges assigned to those lots in the assignment stage.

## **PART 6—PROCEDURES AFTER AUCTION**

This Part describes the procedures and processes that will apply after the auction concludes. It includes details of how auction results will be confirmed and published, as well as outlining licence payment procedures before issuing spectrum licences. Further details concerning licence payment procedures are set out in Schedule 4 to the Determination.

### **Division 1 Notices and refunds to withdrawn applicants and unsuccessful bidders**

This Division outlines the procedures to be followed by the ACMA with unsuccessful and withdrawn bidders after the auction concludes.

#### **Section 63 Notice and refunds to withdrawn applicants**

This section requires the ACMA to notify each applicant that withdrew, or was taken to have withdrawn, that they are no longer bound by the confidentiality obligation under section 17. This must be done as soon as practicable after the end of the auction period. This section also provides that withdrawn applicants who have made eligibility payments will have these payments refunded no later than 6 months after this notification, except where the ACMA has decided to retain the eligibility payment under section 75 due to a breach of the auction rules.

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

This section sets out that the ACMA must, as soon as practicable after the auction, notify each unsuccessful bidder that they have not won any spectrum and that their confidentiality obligation under section 17 will end when the ACMA publishes the auction results under subsection 69(1). The confidentiality obligation for winning bidders ends at the same time: see paragraph 69(2)(b).

The ACMA must refund any eligibility payment made by the unsuccessful bidder no later than 6 months after notifying the bidder that they are unsuccessful, unless the ACMA has decided to retain the eligibility payment under section 75 due to a breach of the auction rules.

### **Division 2 Winning prices, payment and issue of spectrum licences**

This Division outlines procedures for determining final payment amounts (spectrum access charges), the conditions of payment, and the issue of refunds. It is made under section 294 of the Act and is disallowable under section 42 of the LA. The Division, along with Schedule 4 to the Determination, also details the timing for spectrum licence issue, licence commencement, and the publication of auction results.

#### **Section 65 Winning price and balance of winning price**

This section describes how the winning price is calculated for each winning bidder. After the auction, the ACMA will add the primary price, secondary price (if any) and the assignment price (if any) for the lots allocated to the bidder (and associated frequency ranges) in the auction to calculate the winning price. For a winning bidder, the balance of the winning price is the winning price minus any eligibility payments made by the bidder under, or for the purposes of, section 36. The winning price is

the total spectrum access charge fixed under section 294 of the Act payable by the licensee for the issuing of a spectrum licence to the licensee.

#### **Section 66 Results of the auction**

This section describes what auction results are given by the auction manager to bidders.

After the winning bidders and winning prices are determined, the auction manager must tell each winning bidder the number of lots of each product allocated to the winning bidder, the frequency ranges assigned to the lots allocated to the winning bidder, and the winning price to be paid by the winning bidder.

After the winning bidders and winning prices are determined, the auction manager must tell all bidders the names of winning bidders in the auction, the frequency ranges for each product in relation to the lots allocated in the auction and the winning price to be paid by each winning bidder.

The ACMA will not provide bidders with any further auction results information, other than that mentioned in subsection 66(2), subclause 18(2) of Schedule 1 and subclause 18(2) of Schedule 2, unless all bidders agree in writing.

#### **Section 67 Sufficient eligibility payment—issue of spectrum licence without further payment**

This section provides that if the balance of the winning price is less than zero, the ACMA must refund that part of the eligibility payment that is in excess of the total of the winning price. The bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment.

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

#### **Section 68 Payment of balance of winning price**

This section provides that where a winning bidder's balance of the winning price is greater than zero, they must pay it in accordance with the provisions in Schedule 4 to the Determination.

#### **Section 69 Publication of auction results**

This section sets out that after the end of the auction period, the ACMA must announce or publish the names of the winning bidders, the spectrum allocated to each winning bidder and the winning price paid, or to be paid, by each winning bidder. Before it does so, the ACMA must notify each winning bidder that it will announce or publish the auction results, and that their confidentiality obligation will end when the auction results are announced or published. The ACMA will not publish any further auction results information unless all bidders agree in writing.

### **PART 7—MISCELLANEOUS**

This Part describes various miscellaneous matters that apply to the auction process, including the treatment of unallocated spectrum, enforcement procedures, and that the ACMA is not liable for acts or omissions under the Determination. It also sets out information that the ACMA may obtain from applicants and bidders, as well as the treatment of information provided to the ACMA by applicants and bidders.

#### **Section 70 Unallocated spectrum**

This section enables any spectrum remaining unallocated after the auction to be allocated by the ACMA using a procedure to be determined.

### **Section 71 Bidders must not misuse auction system**

This section provides that a bidder must only access and use the auction system in accordance with the information provided by the ACMA under paragraphs 45(2)(c), (d) and (e), which require the ACMA to give the bidder certain information once they are registered to participate in the auction. A bidder must not attempt to interfere with, disrupt or damage the auction system, or use it to breach a law of the Commonwealth.

### **Section 72 ACMA may obtain information from applicants and bidders**

The ACMA may wish to obtain information or documents from an applicant or bidder for a number of reasons, including for the purposes of determining whether any contravention of the Determination has occurred, or considering whether 2 applicants or bidders are affiliated.

If the ACMA has reason to believe that an applicant or bidder has information or documents that are relevant to the performance of any of the ACMA's functions or the exercise of its powers under the Determination, the ACMA may, by written notice, require the applicant or bidder to give to the ACMA, within the period and in the manner and form specified in the notice, any such information or to produce to the ACMA, within the period and in the manner specified in the notice, any such documents.

The ACMA may require the information or documents requested of an applicant or bidder under this section to make decisions which could have a significant impact on their participation in the auction. This provision includes a note that if a requirement in a notice given under this section is breached, including failure to provide available information or documentation when requested, the ACMA may take action under section 75 of the Determination.

The ACMA may vary any such notice given.

### **Section 73 Use of information and documents by ACMA**

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

The ACMA may also disclose information or documents as permitted by Part 7A of the ACMA Act, or as otherwise authorised by law.

### **Section 74 ACMA to provide information to ACCC on request**

This section requires the ACMA to provide specified information to the ACCC, where the ACCC has requested the information in relation to any applicant or bidder. Information that may be requested includes forms and deeds submitted by an applicant prior to and during the allocation process, information about an applicant's affiliations, and information about any breach of confidentiality obligation. It also includes information about bidding during the auction and information about the outcome of procedures set out in Part 6.

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

This section sets out the action that the ACMA may take for a breach of provisions of the Determination, such as the auction rules or related procedures. The ACMA may, on behalf of the Commonwealth, retain an eligibility payment paid, or enforce a deed of financial security given, by an applicant or bidder in any of the following circumstances:

- > it is satisfied that an applicant or bidder, or a related person of the applicant or bidder, or a contractor of the applicant or bidder, breached a provision of the Determination and that the breach affected, or may have affected, the outcome of the auction;
- > it is satisfied that the applicant or bidder, or a related person of the applicant or bidder, or contractor of the applicant or bidder, breached the confidentiality obligation under section 17 before the confidentiality obligation came to an end;
- > it is satisfied that the bidder breached section 56 concerning bidders becoming affiliated during the auction;
- > the bidder is a primary winner or secondary winner who failed to give the statement required under section 60 about affiliations with other primary winners or secondary winners;
- > a winning bidder failed to pay the balance of the winning price as required under Schedule 4 to the Determination;
- > the applicant or bidder failed to comply with a requirement in a notice given under subsection 72(1), requiring the production of information or documents.

The ACMA must notify the applicant or bidder, in writing, of a decision under this section and the nature of the breach or failure, before the later of:

- (a) 6 months after the end of the auction period; and
- (b) 6 months after the day on which the breach or failure occurred.

Any amount retained or obtained by the ACMA under section 75 is forfeited to the Commonwealth unless the Federal Court orders its return under section 77.

#### **Section 76 Effect of retention on winning bidders**

This section provides that if the ACMA makes a decision under subsection 75(1) to retain an eligibility payment or enforce a deed of financial security provided by a winning bidder then, despite section 67 and clause 5 of Schedule 4, the ACMA must not issue a spectrum licence to the bidder, and the spectrum won by the bidder is taken to be unallocated.

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

This section provides that, where an applicant or bidder is notified by the ACMA of its decision to retain an eligibility payment or enforce a deed of financial security, the applicant or bidder may, within one year of receiving the notice, apply to the Federal Court for return of all or part of an eligibility payment or amount obtained by enforcing a deed of financial security.

On application, the Court may:

- (a) if the Court is not satisfied that the applicant or bidder committed the breach identified in the notice given by the ACMA – order the return of all the amount retained by the ACMA; or
- (b) if the Court is satisfied that the applicant or bidder committed the breach but considers that it would be disproportionate for the full amount to be retained – order the return of part of the amount retained by the ACMA.

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

#### **Section 78 No liability of the ACMA, etc.**

This section excludes the ACMA's, the auction manager's and the Commonwealth's liability in respect of damages or costs arising from any act or omissions of any person in relation to the auction procedures set out in the Determination.

**Section 79 Other rights not affected**

This section makes it clear that the Determination does not limit any right of action or remedy that the ACMA or the Commonwealth may have against any person.

**Section 80 Auction manager may delegate functions and powers**

The auction manager may delegate any of the auction manager's functions and powers under the Determination to: a member within the meaning of the ACMA Act; or a member of the ACMA staff that holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position, or is an SES employee or acting SES employee. The terms **SES employee** and **acting SES employee** are defined in *Public Service Act 1999* and referred to in the *Acts Interpretation Act 1901*.

## **SCHEDULE 1—RULES FOR THE PRIMARY STAGE OF THE AUCTION**

Schedule 1 to the Determination sets out the rules for the primary stage of the auction.

### **Part 1—Application and interpretation**

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

This clause provides that all lots of each product are the subject of the primary stage of the auction.

#### **Clause 2 Interpretation**

This clause defines a number of key terms used throughout Schedule 1 and clarifies the meaning of the total value of lots and the value of decrease bids.

### **Part 2—Processing of bids**

#### **Clause 2A Processing algorithm**

This clause sets out the processing algorithm, by which the bids in the primary stage are processed.

At the end of each clock round, the auction system's processing algorithm processes the bids made during the round by all bidders for all products.

The algorithm processes the increase bids and decrease bids in a round according to the following steps:

1. All increase bids and decrease bids made by bidders for lots of each product in each round are collected. Maintain bids are not collected. They are applied in full at the posted price for the clock round.
2. The price point for each increase bid and decrease bid is calculated. The price point for a bid is the quotient of:
  - (a) the difference between the bid price and the opening price; and
  - (b) the difference between the clock price and the opening price.
3. A queue of increase bids and decrease bids is formed, sorted by price point, in ascending order. That is, the increase bids and decrease bids are ranked, starting with those bids with the lowest percentage increase on the opening price.
4. If there are bids with tied price points, a pseudorandom process is used to break the tie.
5. The bids in the queue are processed as follows:
  - (a) The first bid in the queue is either rejected, applied in full, or applied in part. These terms are explained below.
  - (b) If the first bid is applied in full, the bid is deleted from the queue, and the process returns to 5(a) (i.e., the new 'first bid' in the queue is either rejected, applied in full or applied in part).
  - (c) If the first bid is applied in part, the part of the bid that is applied is 'removed' from the bid queue and the remainder is left in first place in the queue. The process returns to 5(a) (i.e., the new 'first bid' in the queue, which is the remainder of the previous first bid that was applied in part, is either rejected, applied in full or applied in part).
  - (d) If the first bid is rejected, the bid is left in the first place in the queue. The second bid is then either rejected, applied in full or applied in part. If the second bid is applied in full, the process returns to 5(a). If the second bid is applied in part, it is treated in the same manner as set out in 5(c), and the process returns to 5(a) and to the first bid in the queue. If the second bid is rejected, the bid is left in the second place in the queue, and the process



moves on to the third bid in the queue, for it to be rejected, applied in full or applied in part in the same manner.

6. The process described above continues until either of the following occurs:
  - (a) the last bid in the queue is rejected; or
  - (b) all bids have been removed from the queue.
7. Once the process described above has stopped, the following matters are calculated:
  - (a) the posted price for the lots of each product for the clock round; and
  - (b) the posted demand for each bidder for the lots of each product for the clock round.The calculation for the posted price is set out below. The calculations for the posted demand for each bidder are set out under clauses 2B, 2C and 2D.
8. The eligibility points of each bidder for the next clock round are then calculated. These calculations are set out below in clauses 12 and 13.

As mentioned above, maintain bids are not processed by the processing algorithm. They are applied in full at the posted price for the clock round.

For lots of a product, the posted price for the clock round is calculated as follows:

- (a) if, after all bids are processed, the sum of all bidders' posted demands for lots of the product is greater than the number of lots of the product available at the auction, the posted price for the lots of the product is the clock price for the round;
- (b) in any other case, either:
  - (i) if at least one decrease bid for lots of the product was applied in full or in part during the round, the posted price for the lots of the product is the highest bid price at which a decrease bid was applied for the clock round; or
  - (ii) if no decrease bid for lots of the product was applied in full or in part during the round, the posted price for the lots of the product is the opening price for the round.

#### **Clause 2B Applying an increase bid**

This clause describes whether, and how, an increase bid is applied in full, applied in part, or rejected, and how to calculate the posted demand for lots of a product for a bidder who made an increase bid in a clock round.

The test for determining whether an increase bid by a bidder is applied in full, applied in part or rejected, is whether the bidder has sufficient available activity. The available activity for a bidder, immediately before processing the increase bid, is a measure of whether the bidder has 'spent' its eligibility points as a result of the bids made on lots of the products that the bidder has had processed to that point for the clock round. The available activity is calculated as follows:

Available activity immediately before the increase bid is processed is equal to:

- (a) the bidder's eligibility points at the start of the round; minus
- (b) the sum of the lot ratings of the bidder's start demands for each product at the start of the round; plus
- (c) the sum of the lot ratings of the number of lots for each product included in any decrease bids for the clock round already applied (in part or fully) already during the round, before processing the increase bid in question; minus
- (d) the sum of the lot ratings of the number of lots for each product included in any increase bids for the clock round already applied (in part or fully) already during the round, before processing the increase bid in question.

Because bidders are potentially bidding on different products, the bidder's increase bids and decrease bids may fall in different places in the queue. The calculation of available activity takes into account any increase bids and decrease bids that have already been applied before the increase bid in question is processed.

An increase bid is a request to increase the number of lots of a product to be allocated to the bidder at the bid price. If the available activity is equal to or greater than the sum of the lot ratings for the number of lots in the increase bid, the increase bid is applied in full. If the increase bid is applied in full, subject to the allocation limits, the bidder's provisional posted demand for lots of the product in question is equal to:

- (a) the number of lots of the bidder's start demand for that product; plus
- (b) if the increase bid was the remainder of an increase bid that had been previously applied in part – the number of lots of the parts of the increase bid of that product already applied in part; plus
- (c) the number of lots of the current increase bid of that product that is being processed.

Subject to the application of the minimum spectrum requirement, if the available activity is less than the sum of the lot ratings for the number of lots in an increase bid that is being processed, the increase bid is applied in part. If the increase bid is applied in part, subject to the allocation limits, the bidder's provisional posted demand for lots of the product in question is equal to:

- (a) the number of lots of the bidder's start demand for that product; plus
- (b) if the increase bid was the remainder of an increase bid that had been previously applied in part – the number of lots of the parts of the increase bid of that product already applied in part; plus
- (c) the number of lots that is equal to the quotient of the available activity and the lot rating for the product, rounded down to the nearest integer.

As discussed above, 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 by the processing algorithm. The remainder is the difference between the number of lots in the increase bid and the number of lots calculated in paragraph (c) immediately above.

An increase bid is rejected if a minimum spectrum requirement has been selected by a bidder for lots of the product and the provisional posted demand calculated as a result of an increase bid being applied in part is less than the minimum spectrum requirement. In this case, the provisional posted demand for the lots of that product of the bidder is equal to zero.

If applying a bid in full or in part would result in the provisional posted demand for the lots of a product of a bidder exceeding the bidder's allocation limits, the provisional posted demand is reduced to the extent necessary such that the provisional posted demand does not exceed the bidder's allocation limits.

After all increase bids and decrease bids for a clock round have been processed, the bidder's posted demand for lots of a product for the clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed.

## **Clause 2C Applying a decrease bid**

This clause describes whether, and how, a decrease bid is applied in full, applied in part, or rejected, and how to calculate the posted demand for lots of a product for a bidder who made a decrease bid in a clock round.

The test for determining whether a decrease bid by a bidder is applied in full, applied in part or rejected, is whether the bidder has sufficient provisional excess demand for lots of the product. A bidder's provisional excess demand for lots of a product immediately before processing the decrease bid is a measure of whether applying the decrease bid would result in aggregate demand for lots of the product falling below their available supply. The bidder's provisional excess demand for lots of the product in question is equal to:

- (a) the excess demand for lots of the product at the start of the clock round (being the difference between the posted demands of all bidders for lots of the product from the previous clock round, or from the pre-bidding phase for the first clock round, and the number of lots available for the product at the auction); plus
- (b) the difference between:
  - (i) the number of lots for the increase bids for the product that have already been applied in full or in part for the clock round, immediately before the decrease bid in question is processed; and
  - (ii) the number of lots for the decrease bids for the product that have already been applied in full or in part, immediately before the decrease bid in question is processed; minus
- (c) the number of lots for the decrease bid of the product to be processed.

A decrease bid is a request to decrease the number of lots of a product to be allocated to the bidder at the bid price. If the provisional excess demand immediately before the bid is processed is equal to or greater than zero, the decrease bid is applied in full. If the decrease bid is applied in full, the bidder's provisional posted demand for lots of the product in question is equal to:

- (a) the number of lots of the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part – the number of lots of the parts of the decrease bid of that product already applied in part; minus
- (c) the number of lots of the current decrease bid of that product, to be processed.

A decrease bid is rejected if:

- (a) the provisional excess demand immediately before the decrease bid is processed is less than zero (that is, if applying the bid in full would mean that the total demand for lots of the product across all bidders would be less than the total number of lots of the product available at the auction); and
- (b) the absolute value of the provisional excess demand is greater than or equal to the number of lots in the current decrease bid of that product (that is, if before the bid is processed, total demand for lots of the product across all bidders is equal to or less than the total number of lots of the product available at the auction).

If a decrease bid is rejected, the bidder's provisional posted demand for the lots of a product for the bidder is equal to:

- (a) the number of lots of the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part – the number of lots of any parts of the decrease bid of that product already applied in part.

Subject to the application of the minimum spectrum requirement, a decrease bid is applied in part if:

- (a) the provisional excess demand immediately before the decrease bid is processed is less than zero (that is, if applying the bid in full would mean that the total demand for lots of the product across all bidders would be less than the total number of lots of the product available at the auction); and
- (b) the absolute value of the provisional excess demand is less than the number of lots of that product in the current decrease bid (that is, if before the bid is processed, total demand for lots of the product across all bidders is still greater than the total number of lots of the product available at the auction).

If the decrease bid is applied in part, the bidder's provisional posted demand for the product in question is equal to:

- (a) the number of lots of the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part – the number of lots of any part of the decrease bid of that product already applied in part; minus
- (c) the difference between the number of lots in the decrease bid of that product and the absolute value of the provisional excess demand.

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 by the processing algorithm. The remainder is the difference between the number of lots in the decrease bid of that product and the number of lots calculated in paragraph (c) immediately above.

If:

- (a) a minimum spectrum requirement has been selected by a bidder for lots of the product; and
- (b) but for the minimum spectrum requirement, a decrease bid would be applied in part but would result in the provisional posted demand for the bidder for the lots of the product being less than the minimum spectrum requirement;

the decrease bid is applied in full but the provisional posted demand is adjusted to zero lots of that product.

After all increase bids and decrease bids for a clock round have been processed, the bidder's posted demand for lots of a product for the clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed.

#### **Clause 2D Applying a maintain bid**

A maintain bid is a bid to maintain the bidder's start demand for lots of a product at the end of the clock round. It is always applied in full, such that, for the clock round in which the maintain bid is made, the bidder's posted demand for lots of the product is equal to the bidder's start demand for lots of that product for the clock round.

### **Part 3—Arrangements for primary stage**

#### **Clause 3 Entries in the auction system before first clock round**

This clause describes the operation of the pre-bidding phase in the primary stage. It enables bidders to review the making of binding decisions about their bidding strategy closer to the auction commencement, rather than by the eligibility deadline or extended eligibility deadline (if there is one).

Before the pre-bidding phase, the auction manager must enter the following information into the auction system for each bidder for each product, as recorded in the register of bidders:

- > provisional start demand;

- > provisional minimum spectrum requirement;
- > allocation limits (applicable to a product or combined products, in the case of lower band and upper band products).

During the pre-bidding phase, bidders may confirm or change their provisional start demands and provisional minimum spectrum requirements. At the conclusion of the pre-bidding phase, these entries become actual start demands and actual minimum spectrum requirements which apply in the first clock round.

If a bidder chooses not to participate in the pre-bidding phase, their actual start demands and actual minimum spectrum requirements are taken to be their provisional start demands and provisional minimum spectrum requirements, as recorded in the register of bidders (and now entered into the auction system).

The same start demand validity rules apply to the pre-bidding phase as to the eligibility nomination form in section 29—they must not exceed the allocation limits nor the supply for any product.

A bidder may only change a provisional start demand in the pre-bidding phase such that their initial eligibility points do not exceed the maximum eligibility points calculated in their eligibility nomination form. This is because the maximum eligibility points are secured by an eligibility payment or deed of financial security, or a combination of both. Therefore, a bidder can only maintain or reduce their eligibility points in the pre-bidding phase. Their initial eligibility points in the first clock round of the primary stage cannot be greater than the maximum eligibility points they have secured.

After the pre-bidding phase concludes, the auction manager must provide each bidder with their actual start demands, actual minimum spectrum requirements (if any), and initial eligibility points.

#### **Clause 4      Setting bid increment percentage and eligibility requirement percentage**

Before the first clock round, the auction manager must set a percentage (bid increment percentage) for each product to be applied in calculating the clock price for the product in a clock round. The auction manager must notify the bid increment percentage to each bidder. The bid increment percentage may be different for different products and may be different for the same product between different clock rounds.

Before the first clock round, the auction manager must set a percentage (eligibility requirement percentage) to be applied in calculating the activity target during each clock round. The auction manager must notify the eligibility requirement percentage to each bidder. The eligibility requirement percentage may be different for different clock rounds.

#### **Clause 5      Schedule for clock rounds of the primary stage**

This clause sets out the requirements the auction manager must meet in scheduling the clock rounds of the primary stage. The auction manager may, at any time, modify the schedule of clock rounds. If this occurs, the auction manager must tell each bidder for the next clock round of the change as soon as practicable.

#### **Clause 6      Recess days**

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. 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. If the auction manager decides to declare a day to be a recess day, the auction manager must inform each bidder accordingly.

### **Clause 7 Clock rounds of the primary stage**

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. Bidding cannot close on a single product; bidding remains open on all products until the final clock round.

Each bidder may make a bid on lots of a product available for bidding during a clock round.

### **Clause 8 Information available for clock rounds of the primary stage**

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:

- > the start time and end time of the clock round;
- > the opening price and clock price that will apply to lots of each product in the clock round;
- > the excess demand for lots of each product, determined as follows:
  - for the first clock round, the difference between the aggregate demand as defined in paragraph (a) of the definition of that term in subclause 2(1) and the supply, of lots of the product;
    - in this case, the aggregate demand is the total of the number of lots of product recorded as actual start demands for all bidders in the pre-bidding phase;
  - for subsequent clock rounds, the difference between the aggregate demand as defined in paragraph (b) of the definition of that term in subclause 2(1) for the previous clock round and the supply, of lots of the product;
    - in this case, the aggregate demand is the total of the posted demands for the lots of the product of all bidders in the previous clock round;
- > the eligibility points of the bidder for the clock round;
- > the bid increment percentage and eligibility requirement percentage for the clock round;
- > any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

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:

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

### **Clause 9 Changing bid increment percentage**

This clause provides that the auction manager may, at any time during the primary stage, change the bid increment percentage for a product.

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

The auction manager must notify each bidder before the change takes effect.

#### **Clause 10 Changing eligibility requirement percentage**

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.

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

The auction manager must notify each bidder before the change takes effect.

### **Part 4–Bidding in the primary stage**

#### **Clause 11 Definitions**

This clause defines 2 terms used in Part 4.

#### **Clause 12 Eligibility points bidding cap**

Subclause (1) sets out a bidder's eligibility points at different times during the primary stage. In the first clock round, the bidder's initial eligibility points will be those recorded in the auction system at the end of the pre-bidding phase. In subsequent rounds, the bidder's eligibility points will be the lesser of the bidder's eligibility points in the previous clock round and the bidder's eligibility points calculated in accordance with subclause 13(2).

Subclause (2) of clause 12 sets out a limit on a bidder's bidding activity, based on the bidder's eligibility points. If, in a clock round:

- (a) the total value of the lots of each product, in eligibility points, for the start demands of the bidder for the round; plus
- (b) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder for the round; minus
- (c) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder for clock round;

is greater than the bidder's eligibility points at the time of the bid or bids, the bidder is not entitled to make that bid or those bids.

#### **Clause 13 Loss of eligibility points**

This clause sets out how a bidder's eligibility points for the next clock round is calculated if they do not meet the activity target for the current clock round, and how that impacts their bidding in future clock rounds.

A bidder's eligibility points for the next clock round will be reduced if the bidder does not meet its activity target in the current clock round. Subclause (2) sets out how to calculate a bidder's eligibility points for the next clock round, based on the higher figure of the eligibility points for their placed bids or processed bids in the current clock round, divided by the eligibility requirement percentage.

In future clock rounds, bidders may only bid in such a way that they do not exceed their eligibility points for that clock round.

#### **Clause 14 Clock round bids**

This clause describes general rules for primary stage bidding.

A bidder is entitled to bid in a clock round if the bidder's eligibility points are not reduced to zero.

A bidder may not make more than one bid for each product in each clock round.

Except where the auction manager permits bids under subsections 54(1) or 54(2), 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.

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.

#### **Clause 15      Validity of bids**

This clause outlines specific rules in relation to bid validity during the primary stage.

For all bids, a bid in a clock round will only be valid if, except where the auction manager takes steps under subsection 54(2), the bid is received by the auction system between the start time and the end time of the clock round.

For increase bids for lots of a product in a clock round, the bid will only be valid if all the following circumstances also exist for the bid:

- > the bid price is greater than or equal to the opening price and less than or equal to the clock price for lots of the product for the clock round;
- > the bid price is a multiple of 100;
- > the bid, if applied in full, would not exceed the bidder's allocation limits applicable to the product or combined products (in the case of lower band and upper band products);
- > the bid would, if applied in full, not result in the bidder's posted demand for lots of the product being greater than the number of lots available for the product at the auction;
- > for a bidder that selected a minimum spectrum requirement, if the number of lots of the bidder's start demand for the product in the clock round is zero, the number of lots for the increase bid of the product is at least the minimum spectrum requirement;
- > the bid is not part of a bidding activity for a clock round that would contravene subclauses 12(2) or 13(3) concerning eligibility points.

For decrease bids for lots of a product in a clock round, the bid will only be valid if all the following circumstances also exist for the bid:

- > the bid price is greater than or equal to the opening price and less than or equal to the clock price for lots of the product for the clock round;
- > the bid price is a multiple of 100;
- > the difference between:
  - a. the number of lots for the bidder's start demand for the product; and
  - b. the number of lots for the bidder's decrease bid for the product;in the clock round is not less than zero;
- > for a bidder that selected a minimum spectrum requirement, the number of lots of the bidder's start demand in the clock round minus the number of lots for the decrease bid of the product is either zero or at least the minimum spectrum requirement;
- > the bid is not part of a bidding activity for a round that would contravene subclauses 12(2) or 13(3) concerning eligibility points.

Subclause (2) provides that if a bidder does not make a bid for lots of a product, or does not make a valid bid for lots of a product, during 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 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. If the decrease bid were applied in full, it would have the effect of reducing the bidder's posted demand for lots of the product for that clock round to zero. Such a bid will also have consequences for the bidder's eligibility points for the next clock round. The purpose of this provision is to ensure a bidder's financial commitment does not increase without their explicit authorisation, which may occur if a bidder who does not make a valid bid for lots of a product during a clock round was taken to have requested a maintain bid for the number of lots equal to their posted demand from the previous clock round.

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

### **Clause 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. This will be 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 to the assignment stage.

### **Clause 17 Determination of primary winners and primary prices**

This clause sets out how to determine the primary winners and the primary price to be paid by each primary winner. The primary price is a component of the spectrum access charge imposed in relation to the spectrum licence to be issued to winning bidders.

If a bidder has a posted demand for one or more lots of a product as a result of the final clock round, that bidder is a primary winner in relation to those lots (allocated lots).

For each such product, the total posted price for the primary winner is the figure obtained by multiplying the posted demand for the product by the posted price for the product during the final clock round.

The primary price is the sum of the total posted prices for each product for which the primary winner has allocated lots, rounded to the nearest hundred.

Clause 17 relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

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

### **Clause 18 Results of the primary stage**

After the primary winners and primary prices are determined, the auction manager must tell each primary winner, in writing, the total number of lots of each product allocated to the primary winner, the total posted price for the allocated lots of each product, and the primary price to be paid by the primary winner.

After the primary winners and primary prices are determined, the auction manager must tell all bidders, in writing, the total number of primary winners and the total number of lots of each product that have been allocated to primary winners.

**Clause 19      End of the primary stage**

Immediately after the auction manager provides the results in accordance with clause 18, the auction manager must tell each bidder, in writing, that the primary stage is completed.

## **SCHEDULE 2—RULES FOR THE SECONDARY STAGE OF THE AUCTION**

The secondary stage is required to auction single lots of a product that remain unallocated after the primary stage. That is, a lot will only be offered in the secondary stage if it is the only unallocated lot in that product (residual lot). If no residual lots remain unallocated from the primary stage or there are no bidders eligible to bid on the residual lots, the secondary stage is not required. If there are single lots in multiple products to be allocated, then those lots will be allocated simultaneously.

The secondary stage uses a simple clock auction (SCA) format. The starting prices in the secondary stage are the same as the primary stage. The allocation limits continue to apply in the secondary stage. To minimise strategic bidding, if a bidder has selected an MSR for a product and does not obtain at least that number of lots for that product during the primary stage, they will not be permitted to bid on the residual lot of that product in the secondary stage. For example, if any bidder selects an MSR of 2 lots for the Canberra product and obtains zero lots for Canberra in the primary stage, they are ineligible to bid on any Canberra residual lot in the secondary stage since they would obtain one lot, which is below their minimum spectrum requirement. This is to deter bidders from reducing demand during the primary stage in order to attempt to obtain an amount of spectrum less than their MSR at a lower price in the secondary stage.

Eligibility points are not applicable to the secondary stage since there is no activity rule or ability to switch demand between products.

### **Part 1—Application and interpretation**

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

This Schedule applies to residual lots, as that term is defined in this clause and explained in the paragraph above, of each product in the 26 GHz band.

#### **Clause 1A Bidders to choose between lots of a combined product, or are not to bid on lots of a combined product**

This section addresses the special case where a bidder wins one lot less than the allocation limit in the primary stage for any of the combined products (Greater Perth, Margaret River and Hobart), and wishes to bid on a residual lot offered for that product in the secondary stage. In this case, a bidder must nominate their preferred product—Lower or Upper—on which they wish to bid. This must be done in writing before the secondary stage commences.

For example, say a bidder wins 600 MHz in Hobart-Lower and 300 MHz in Hobart-Upper in the primary stage and both products have a residual lot offered in the secondary stage. Because of the allocation limit of 1 GHz, the bidder can only bid on either the Lower or Upper product, not both. Before the secondary stage commences, the bidder must nominate which product they will bid on.

This is to avoid the situation that could occur if the bidder potentially won a lot in both the Hobart-Lower and Hobart-Upper products (offered simultaneously in the secondary stage), causing them to exceed their allocation limits. If the bidder does not make a nomination, they may not bid for either residual lot in either product.

This schedule makes any bid on a single lot of a lower band product or a related upper band product invalid if it would exceed the bidder's allocation limits applicable to the relevant combined products.

#### **Clause 2 Interpretation**

This clause defines a number of key terms used throughout Schedule 2. It also outlines which lots are subject to the minimum spectrum requirement test and the requirements to meet that test. A lot meets the minimum spectrum requirement test for a bidder if either of the following applies:

- (a) the bidder did not select a minimum spectrum requirement for the lots of that product; or

- (b) 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**

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

This clause provides for scheduling rounds of the secondary stage and setting the bid increment percentage.

There must be at least 24 hours between the final clock round of the primary stage and the first round of the secondary stage. Rounds must only occur on a working day (as defined in subsection 4(1)) and will start and finish between 9 am and 5 pm, other than a recess day. The scheduling of the rounds between those times is at the auction manager’s discretion. There is no minimum or maximum duration for each round, nor for the interval between rounds. There is no upper or lower limit on the number of rounds that can be held on any day.

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

Before the first round of the secondary stage, the auction manager must set the bid increment percentage for each residual lot as a percentage of the starting price for the lot in the first round of the secondary stage, and of the specified price for the lot in any other round of the secondary stage. This bid increment percentage affects the minimum bid that can be made by a bidder for a lot in a round, if the bidder wishes to make bids in later rounds. The auction manager must notify the bid increment percentage to all bidders before the first round of the secondary stage. The bid increment percentage may vary between lots and may vary between rounds.

### **Clause 4 Rounds of the secondary stage**

Each residual 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.

During a round of the secondary stage, and subject to Schedule 2, each bidder for the round may make a bid on each lot that is available for bidding during that round and that meets the minimum spectrum requirement test for the bidder. All lots available for bidding will be on offer simultaneously.

A bidder cannot participate in bidding for a residual lot of a product if allocation of that lot to the bidder would exceed the bidder’s allocation limits. Eligibility points are not required to bid in the secondary stage.

### **Clause 5 Information available during rounds of the secondary stage**

Before each round starts, the auction manager must use the auction system to inform each bidder of the start time and end time of the round. For each residual 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 auction manager will provide the following information:

- > the specified price that will apply to the lot in the round;
- > the starting price for the lot for the first round of the secondary stage;
- > 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;
- > the total number of bidders for whom the lot meets the minimum spectrum requirement test and for whom the allocation of the lot as a unit of product would not exceed the bidder’s allocation limits;

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

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

- (a) the bids made by the bidder during the round (if any);
- (b) if, as a result of the round, the bidder is the secondary winner for a lot - the secondary price for that lot;
- (c) for each lot available for bidding by that bidder 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 of the round; and
- (d) any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

The auction manager is not prevented from providing the above information to other bidders at any time during the secondary stage.

#### **Clause 6      Recess days**

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

### **Part 3–Bidding in the secondary stage**

#### **Clause 7      When bidder cannot make a bid on a lot**

In the SCA format, bidders can make a continue bid or an exit bid. A continue bid in a round is a bid equal to or greater than the specified price for the lot for the round. An exit bid in a round is a bid equal to or greater than the specified price for the lot for the previous round (or starting price for the lot in the first round), but less than the specified price for the lot in that round.

If, in a round of the secondary stage a bidder does not make a bid on a lot, or 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.

#### **Clause 8      Starting price and specified price**

This clause provides that a bid below the starting price on a lot will not be accepted. The starting prices for residual lots are the same as for lots in the primary stage.

This clause also explains how the specified price for each lot is to be calculated in a round of the secondary stage of the auction. The specified price for a lot in the first round is the sum of the starting price for the lot and the bid increment percentage for the lot multiplied by that starting price, rounded up to the next hundred. The specified price for a lot in any other round of the secondary stage is the sum of the specified price for the lot in the previous round of the secondary stage and the bid increment percentage for that lot multiplied by that specified price, rounded up to the next hundred. If a round is the final round for bids on a lot, there is no specified price for the lot in any later round of the auction.

#### **Clause 9      Changing bid increment percentage**

This clause provides that the auction manager may, at any time during the auction, change the bid increment percentage set under subclause 3(7) of this Schedule, to vary the specified price on a lot in

future rounds. Adjusting the level of these bid increment percentages may be used to influence the speed at which the auction progresses.

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

**Clause 10 General rules about bidding**

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

A bid is taken to have been made when the bidder’s bid for a round of the auction has passed data validation checks that are performed by the auction system, subject to subsections 54(1) and 54(2) (which allow the auction manager to accept bids by a method other than the auction system and accept bids after the round has closed, in certain circumstances).

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

**Clause 11 Continue bid made at or greater than specified price**

As mentioned above, bidders are allowed to bid above the specified price for the lot in a round in the secondary stage. A bidder may make a continue bid on a lot in a round of the auction (the relevant round) that is for an amount (the advance price) that is equal to or greater than the specified price for the lot in the relevant round. This continue bid will constitute, in any round after the relevant round where the advance price is greater than or equal to the specified price for the lot in that round, a continue bid made on that lot in that round. This bid will also, in the first round after the relevant round in which the advance price is less than the specified price for the lot in that round, constitute an exit bid made on that lot in that round.

For example, consider a lot with a starting price of \$100,000, and a bid increment percentage of 10%. In the round N, a bidder makes a bid of \$130,000 (advance price continue bid).

<i>Round</i>	<i>Specified price for the previous round, or starting price for the first round</i>	<i>Specified price for the round</i>	<i>An advance price continue bid in the first round of \$130,000 is taken to be...</i>
N	\$100,000	\$110,000	A continue bid, being greater than \$110,000
N+1	\$110,000	\$121,000	A continue bid, being greater than \$121,000
N+2	\$121,000	\$133,100	An exit bid, being greater than \$121,000 but less than \$133,100.

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

**Clause 12 Validity of bids**

This clause prescribes the requirements for a bid in the secondary stage to be valid.

A bid in a round of the secondary stage is valid if all of the criteria listed in clause 12 apply to the bid. These criteria include a requirement that the bid for each product (for both the combined products and

other products), would not cause the bidder to exceed the bidder's allocation limits, taking into account the size of the lot and the total size of the lots of the product, or combined products, allocated to the bidder in the primary stage.

**Clause 13 Exit bids – exclusion from further participation**

If, in a round of the secondary stage, a bidder (the exit bidder) makes an exit bid on a lot and 2 or more bidders make a continue bid for the lot, the exit bidder cannot make any bid on the lot in any subsequent round of the secondary stage.

**Part 4–Determining the secondary winners and secondary prices**

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

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

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

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

If 2 or more continue bids are made for the lot during a round, there will be at least one further round for that lot.

The secondary stage ends when, for each lot of a product in the stage, the final round for bids on a lot has occurred (the final round of the secondary stage).

The final high bid is the bid that wins the lot. The final high bid for a lot in the secondary stage is whichever of the following applies:

- (a) if one bid was made on the lot in the final round for the lot – that bid is the final high bid;
- (b) if one continue bid was made on the lot in the final round for the lot (regardless of how many exit bids were made in that round) – that continue bid is the final high bid;
- (c) if all of the following apply:
  - (i) no continue bid was made on the lot in the final round for bids on the lot; and
  - (ii) 2 or more exit bids were made on the lot in the final round for the lot; and
  - (iii) one of those exit bids (the high exit bid) was greater than each of the other exit bids; – the high exit bid;
- (d) the bid selected through the tiebreaker process set out in clause 15.

That is, generally speaking, the highest bid made on the lot will be the final high bid for the lot. However, in the circumstance where no continue bid is made on the lot in the final round and there are 2 or more exit bids that are equal and higher than any other exit bid, the final high bid for the lot is worked out in accordance with clause 15.

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

Subject to subclause 15(2), the bidder who made the final high bid for a lot is the secondary winner for that lot. However, if there is no bid by any bidder in the first round for a lot, bidders are not considered to have entered an exit bid at the starting price (so no bid is taken to have been made under the definition of a bid in subclause 2(1)), and accordingly there will be no final high bid in that case (and, therefore, there is no winning bidder for that lot).

### **Clause 15 Tiebreaker for a lot**

This clause applies in relation to a lot if, during the final round for bids on a lot, no continue bid was made on the lot, and 2 or more exit bids were made on the lot, and of those exit bids:

- (a) 2 or more of those exit bids were equal (the tied exit bids); and
- (b) the tied exit bids were greater than each other exit bid made in the final round.

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

For the purposes of paragraph 14(3)(d) of Schedule 2, the final high bid on the lot is the amount of the last bid made by the secondary winner. This will be the amount of the tied exit bids.

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

#### **Clause 16 End of rounds of the secondary stage**

The rounds of the secondary stage will end immediately after either:

- (a) if:
  - (i) clause 15 applies in relation to a lot; and
  - (ii) 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 selection mentioned in subclause 15(2) occurs; or
- (b) in any other case – the final round of the secondary stage.

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.

#### **Clause 17 Determination of secondary winners and secondary prices**

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.

The residual price for an allocated lot of a product in the secondary stage is an amount equal to:

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

The secondary price (rounded up to the next hundred dollars) 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.

Clause 17 relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

#### **Clause 18 Results of the secondary stage**

After the secondary winners and secondary prices are determined, the auction manager must tell each secondary winner, using the auction system, the lots of each product allocated to the secondary winner, 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.



After the secondary winners and secondary prices are determined, the auction manager must tell all bidders (in the primary stage and secondary stage) the total number of secondary winners and the product to which the lot belongs, for each lot allocated to a secondary winner.

**Clause 19      End of the secondary stage**

The auction manager must tell each primary winner and each secondary winner, the sum of the primary price and the secondary price for all the allocated lots, in the primary stage or secondary stage, of each product of that winner.

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**

### **Part 1—Application and interpretation**

The assignment stage is used to allocate specific frequencies to the winners of generic lots identified at the completion of the primary stage and secondary stage.

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

Schedule 3 applies to the lots of each product allocated to a bidder in the primary stage or secondary stage.

#### **Clause 2 Interpretation**

This clause defines a number of key terms used throughout Schedule 3.

### **Part 2—Arrangements for assignment stage**

#### **Clause 3 Schedule for assignment rounds of the assignment stage**

This clause sets out the scheduling arrangements and how products may be ordered and grouped for assignment rounds.

After the completion of the primary stage and secondary stage (if any), the auction manager must announce the anticipated start time and end time of each assignment round and the product or products that will be the subject of each assignment round.

The first assignment round will not begin until at least 24 hours after the end of the primary stage and secondary stage (if any). Assignment rounds must be held between 9 am and 5 pm on working days.

The auction manager will announce to all bidders the anticipated schedule of assignment rounds for a day at least one hour before the start time of the first assignment round for that day. The auction manager has discretion over the scheduling and duration of the assignment rounds, the number of rounds per day, and the products that will be assigned in each round.

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**

#### **Clause 4 Frequency range options in assignment rounds**

This clause explains how the set of frequency range options available to bidders for lots won in the primary stage or secondary stage will be determined. It also specifies who is entitled to bid in the assignment stage and the information about frequency range options that must be provided to bidders.

Only bidders who have won at least one lot of a product in the primary stage or secondary stage are eligible to bid in the assignment round for the product.

Subject to subclauses (3) and (4), for each product, under subclause (2) the auction manager must determine a list of frequency range options available to each bidder so that 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. For each option determined by the auction manager, there must also exist at least one frequency range option for every other bidder so that each bidder's frequency range complies with the contiguity requirement for a frequency range and none of the frequency ranges overlap.

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

frequency range assigned to the unallocated lots will be a contiguous frequency range corresponding in bandwidth to the total size of the unallocated lots and adjacent to the frequency 27.5 GHz (except in the case of the lower band products).

If a bidder wins lots in both an upper band product and a related lower band product, the auction manager must determine the frequency range options according to the following rules:

- > if only one bidder wins lower band and upper band lots, that bidder will have a contiguous frequency range assigned for all those allocated lots;
- > if 2 or more bidders win lower band and upper band lots, the bidder with the most lots in total will have a contiguous frequency range assigned to all those allocated lots;
- > if 2 or more bidders win the same total number of lower band and upper band lots, the bidder with the most upper band lots will have a contiguous frequency range assigned to all those allocated lots;
- > if 2 or more bidders win the same number of both lower band and upper band lots, they become the subject of an assignment round, and while each of the lower band and the upper band will have a contiguous frequency range assigned to the allocated lots, those frequency ranges may not be adjacent to each other.

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 the clause are met for each individual product in the group. Offering frequency range options to a group of products is intended to enable bidders to obtain common frequency ranges across different areas, if they so desire. This may facilitate the efficient use of spectrum by licensees.

At least 24 hours before the start of the first assignment round, the auction manager must provide each bidder in the assignment stage with the list of frequency range options available to the bidder in each of the assignment rounds.

#### **Clause 5      Assignment bids**

This clause describes what an assignment bid consists of, how a bidder may bid, how a bid can be changed during an assignment round and which bids are considered binding.

An assignment bid consists of the frequency range option that is being bid for and a bid price for the frequency range option that is a multiple of one hundred.

A bidder may only submit a bid for a frequency range option in the assignment round that has been provided to them by the auction manager. Bidders can bid on more than one frequency range option within a round, showing their order of preference by the amounts bid. However, bidders are not obliged to place a bid in any assignment round.

A bidder can change, delete or replace an assignment bid 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.

Subclause (5) provides that where there is no valid bid for a frequency range option, it is taken to have an assignment bid with a bid price of zero dollars. Subclause (6) provides that if a bidder does not submit any assignment bid, the bidder is taken to have bid zero dollars for every frequency range option.

## **Clause 6      Validity of assignment bids**

This clause sets out the conditions for valid bids during the assignment rounds that will be considered in determining winning assignment bids.

To be valid, an assignment bid must be:

- > received between the start time and end time of the assignment round for the product or group of products, except where subsection 54(2) applies;
- > for a frequency range option made available to the bidder;
- > for an amount that is a multiple of one hundred.

## **Part 4–Determining winning assignment bids and assignment prices**

### **Clause 7      Determination of winning assignment bids**

This clause explains the rules for determining the winning assignment stage bids.

After the assignment round has ended, the auction manager must determine the winning assignment bids for each product or group of products and tell each winning assignment round bidder its winning assignment bid.

The conditions that the set of winning assignment bids must meet are the following:

- (a) 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
- (b) the frequency ranges included in any pair of winning assignment bids for a product or group of products do not overlap; and
- (c) if relevant, the frequency range of any unallocated lots of a product is assigned in accordance with subclause 4(3); and
- (d) if relevant, subclause 4(4) is applied.

Subject to (a)-(d) above, the assignment bids selected must maximise the sum of the assignment bid prices. The auction system will use a computerised pseudorandom selection process to determine winning bids if more than one combination of bids meet the above criteria.

Clause 7 relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

### **Clause 8      Determination of assignment prices**

This clause explains how the price of each winning assignment stage bid is calculated in each round.

The auction manager must determine the assignment price for each winning bid in an assignment round and tell each winning assignment round bidder its winning assignment price for the frequency range.

The assignment price in a round will be zero if there is only one bidder in that round. For a round with more than one bidder, the assignment price for each bid in the winning combination of assignment bids may be zero but can be no more than the assignment bid price.

Subject to the constraint that the assignment price must be no more than the assignment bid price, a set of assignment prices in the assignment round must be selected so that:

- (a) 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
- (b) if more than one set of assignment prices satisfies paragraph (a)—the sum of the assignment prices is also minimised; and
- (c) if more than one set of assignment prices satisfies paragraphs (a) and (b)—it is the solution to the formula listed in subclause (6), which applies a weighted Nearest–Vickrey–Core pricing rule.

Under the weighted Nearest–Vickrey–Core pricing rule, the bidder pays a price less than or equal to its bid price. There are a number of steps to determine this price. First, the Vickrey price for each bidder is calculated. The Vickrey price is calculated by taking the winning bidder’s assignment bid price, and subtracting the difference between the highest value combination of assignment bids and the highest value package combination of assignment bids that can be formed without the winning bidder. If no other bidder or group of bidders has offered a bid price higher than the Vickrey price, then it is the valid assignment price. If not, the price must be raised from the Vickrey price to satisfy that condition. When this price adjustment is required for a number of bidders, the price increase is shared between bidders proportional to the starting prices of their winning lots.

As a result, the weighted Nearest–Vickrey–Core pricing rule chooses a minimum price for each bidder such that:

- (a) every bidder is satisfied—in the sense that no bidders bid more (relative to the pricing) for the assignment of an alternative frequency range option; and
- (b) prices are adjusted proportionally—bidders who win more blocks have their prices increased more to satisfy (a); and
- (c) the bid price is respected— the price of a bid serves as a ceiling on proportional adjustment in (b). The remainder falls proportionally on other bidders.

A bidder who has assignment prices for winning assignment bids in an assignment round is an assignment winner.

The total assignment price, to be paid by the assignment winner, is an amount equal to the sum of the assignment prices.

Assignment prices will be rounded to the nearest hundred dollars.

Clause 8 relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

## **Part 5 –Bringing the assignment stage to an end**

### **Clause 9 Results of the assignment stage**

After the end of all assignment rounds, the auction manager must tell each winning assignment round bidder the frequency ranges assigned to lots of a product allocated to the bidder in the primary stage or secondary stage, and any assignment price for the frequency ranges assigned.

### **Clause 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.

## **SCHEDULE 4—PAYMENT OF BALANCE OF THE WINNING PRICE GREATER THAN ZERO AND ISSUE OF SPECTRUM LICENCES**

Schedule 4 relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

### **Part 1—Application and interpretation**

Schedule 4 describes how winning bidders can pay the winning price for the spectrum won at auction; that is, how they can pay the spectrum access charge for a spectrum licence. Section 67 of the Determination addresses licence issue where the balance of the winning price for a winning bidder is less than or equal to zero. Section 68 of the Determination, using Schedule 4, addresses licence issue where the balance of the winning price is greater than zero. Schedule 4 provides 2 options—a full upfront payment or 5 annual instalment payments. These options implement the spectrum access charges direction.

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

Schedule 4 applies to the payment of the balance of the winning price by a winning bidder if it is greater than zero.

#### **Clause 2 Interpretation**

This clause clarifies the term “winning bidder” as it applies to Schedule 4.

### **Part 2—Election of winning bidder for payment of winning price**

#### **Clause 3 Payment of balance of the winning price**

This clause outlines the actions:

- > the ACMA must take to notify winning bidders of their payment options;
- > winning bidders must take to pay their winning price in full (i.e. to pay the balance of their winning price in one sum), or to pay their winning price in instalments, in order to be issued a spectrum licence.

First, the ACMA must notify the bidder of its winning price, the balance of the winning price taking into account any eligibility payments, the payment options and deadlines, and a deadline for choosing the bidder’s payment option. This deadline must be at least 10 working days after the date of the notice.

If the bidder elects to pay the winning price in full, the ACMA confirms that election and informs the bidder of the deadline to pay the balance of the winning price.

If the bidder elects to pay the winning price in instalments, the ACMA confirms that election and informs the bidder that it must pay the instalment amounts in accordance with clause 4, and provide a bank guarantee as described in the Marketing Plan. This implements section 6 of the spectrum access charges direction. The purpose of the bank guarantee is explained in that direction and its explanatory statement.

If the notice contains a material error, subclauses (4) and (5) provide that the ACMA must give the winning bidder a revised notice, with a revised deadline for the payment election not later than 10 working days after the date of the revised notice.

Subclause (6) provides that a winning bidder who does not give written notice of its payment option by the relevant deadline is taken to have elected to pay the winning price in full.

Under paragraph 62(2) of the Act, the ACMA must issue a spectrum licence to the person to whom it is allocated if the person:

- (a) pays to the ACMA the spectrum access charge for issuing the licence; or
- (b) reaches an agreement with the ACMA for the payment of that spectrum access charge.

In the case where the winning bidder elects to pay the winning price in instalments, they are not paying the spectrum access charge in full, and hence must reach agreement with the ACMA for the payment of the spectrum access charge.

Subclause (7) requires a winning bidder to provide a bank guarantee as a precondition to reaching agreement with the ACMA under paragraph 62(2)(b) of the Act.

Subclause (8) provides that if a spectrum licence is issued to a winning bidder in accordance with subclause 5(2), none of the instalment payments are refundable in any circumstances.

Under subclause (9), a winning bidder who gives a bank guarantee to the ACMA by email must provide the original document within 3 working days, unless a later time is agreed by the ACMA.

#### **Clause 4      Terms of payment by instalments**

This clause sets out the terms for instalment payments and implements subsections 5(3)-(6) of the spectrum access charges direction. Further details about the purpose and implementation of these provisions can be found in the spectrum access charges direction and its explanatory statement.

If a winning bidder elects to pay in instalments, it must make 5 equal instalment payments of 20.32% of the winning price. The first instalment minus any eligibility payment must be paid prior to the issue of a spectrum licence.

The second, third, fourth and fifth instalment payments are paid on an annual basis to the ACMA. The second instalment is paid:

- > if the date on which the spectrum licence comes into force is the same as the date of issue, 12 months from that date;
- > if the date on which the spectrum licence comes into force is after the date of issue, a day no earlier than 12 months after the date of issue and no later than 12 months after the licence comes into force.

The third, fourth and fifth instalments are paid on the first, second and third anniversaries respectively of the second instalment payment.

If a bidder has made an eligibility payment which exceeds the amount of their first instalment, any remainder will be deducted from the second instalment. If necessary, any further remainders will be deducted from subsequent instalments.

### **Part 3—Issue of spectrum licences**

#### **Clause 5 Issue of spectrum licence**

This clause specifies when the winning bidder is entitled to be issued a spectrum licence for the spectrum allocated to them at auction.

If the winning bidder elects to pay the winning price in full, it must pay the balance of the winning price in accordance with subclause 3(2) to be issued a spectrum licence for the spectrum allocated to the bidder at auction.

If the winning bidder elects to pay the winning price in instalments, it must pay the first instalment in accordance with subclause 4(2) and give the ACMA a bank guarantee in accordance with subclause 3(3), to be issued a spectrum licence for the spectrum allocated to the bidder at auction.

#### **Clause 6 Default**

This clause specifies the consequences of winning bidders not paying the spectrum access charge for the spectrum allocated to them at auction.

If a winning bidder does not pay the spectrum access charge according to the bidder's payment option:

- > no spectrum licence is allocated to the bidder;
- > allocation of spectrum licences to other bidders is not affected;
- > the spectrum that would have been included in the spectrum licence allocated to the bidder is treated as unallocated under section 70.

These provisions apply to both:

- > a winning bidder who elects to pay the winning price in full and does not pay the balance of the winning price in accordance with subclause 3(2); and
- > a winning bidder who elects to pay the winning price in instalments and either or both:
  - does not pay the first instalment in accordance with subclause 4(2); or
  - does not give the ACMA a bank guarantee in accordance with subclause 3(3).

Section 15 of the Marketing Plan further provides that any spectrum licence issued to a winning bidder who elects to pay their winning price in instalments will contain a licence condition that requires the licensee to provide a bank guarantee to secure 5% of the outstanding amount still owing at any point in time for the spectrum access charge.