



Radiocommunications (Spectrum Licence Allocation — 26 GHz Band) Determination 2020

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

Dated: 20 November 2020

Chris Jose
[signed]
Member

Linda Caruso
[signed]
~~Member~~/General Manager

Australian Communications and Media Authority

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Part 1—Preliminary

1 Name of instrument

This instrument is the *Radiocommunications (Spectrum Licence Allocation — 26 GHz Band) Determination 2020*.

2 Commencement

This instrument commences at the start of the day after it is registered on the Federal Register of Legislation.

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

3 Authority

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

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

4 Interpretation

(1) In this instrument:

26 GHz band means the part of the spectrum from 25.1 GHz to 27.5 GHz.

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

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

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

Act means the *Radiocommunications Act 1992*.

affiliated: see section 14.

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

allocation limits: see sections 11 and 12.

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

applicant information package means a package containing the information, forms and other documents set out in subsection 26(1).

application deadline: see paragraph 25(1)(e).

application fee means the amount set under section 23.

application form means the form approved by the ACMA under paragraph 26(1)(f).

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

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

assignment price: see clause 2 of Schedule 3.

assignment round: see clause 2 of Schedule 3.

assignment stage means the assignment rounds of the auction:

- (a) commencing with the first assignment round; and
- (b) ending immediately after the auction manager provides the results for every assignment round in accordance with clauses 9 and 10 of Schedule 3.

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

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

auction manager means the person appointed under section 22.

auction period means the period:

- (a) commencing on the later of the eligibility deadline or extended eligibility deadline (if there is one); and
- (b) ending immediately after the auction manager provides the results for the auction in accordance with section 66.

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

balance of the winning price: see subsection 65(2).

bank guarantee has the meaning given by subsection 6(5) of the spectrum access charges direction.

bid:

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

bidder means a person registered by the ACMA as a bidder under section 45.

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

confidential information: see section 16.

deed of acknowledgement means a deed in the form approved under paragraph 26(1)(g) that has been completed and executed by an applicant in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

Note: Strict compliance with the form is required.

deed of confidentiality means a deed in the form approved under paragraph 26(1)(h) that has been completed and executed in accordance with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

Note: Strict compliance with the form is required.

deed of financial security means a deed in the form approved under paragraph 26(1)(m) that has been completed and executed in accordance

with this instrument and with any instructions provided on or with the form, to the extent those instructions are not inconsistent with this instrument.

eligibility deadline: see paragraph 25(1)(f).

eligibility nomination form means the form approved by the ACMA under paragraph 26(1)(l) or subsection 37(3), whichever is the case.

eligibility payment means a payment made by an applicant under section 36, and includes an additional eligibility payment made by an applicant under subsection 39(3) for the purposes of section 36.

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

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

entry, in the pre-bidding phase, means an entry in the auction system made by a bidder under paragraph 3(2)(a) or 3(2)(b) of Schedule 1.

extended eligibility deadline: see paragraph 37(2)(b).

final clock round: see clause 16 of Schedule 1.

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

lot: see subsection 5(1).

lot rating means the value of a lot of a product in eligibility points set by the ACMA under paragraph 27(1)(b) or 37(1)(b), whichever is the case.

marketing plan means the *Radiocommunications Spectrum Marketing Plan (26 GHz Band) 2020*.

maximum eligibility points, for a bidder, means the maximum number of eligibility points secured by the bidder under section 36.

minimum spectrum requirement, for a bidder in relation to lots of a product, means the number of lots of the product entered by, or taken to be entered by, the bidder as its minimum requirement in the pre-bidding phase of the primary stage in accordance with paragraph 3(2)(b) or 3(3)(b) of Schedule 1.

new application deadline: see paragraph 37(2)(a).

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

pre-bidding phase: see paragraph 50(1)(b).

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

primary stage means the pre-bidding phase and clock rounds of the auction:

- (a) commencing with the start of the pre-bidding phase; and
- (b) ending immediately after the auction manager provides the results for the final clock round in accordance with clauses 18 and 19 of Schedule 1.

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

product: see subsection 5(1).

provisional minimum spectrum requirement, for an applicant in relation to lots of a product, means the number of lots of the product selected by the applicant as its minimum requirement in a completed eligibility nomination

form in accordance with subparagraph 28(2)(a)(iii) or paragraph 34(6)(a) or 39(1)(c) or subparagraph 41(2)(a)(iii).

provisional start demand, for an applicant in relation to lots of a product, means the number of lots of the product specified by the applicant in a completed eligibility nomination form in accordance with subparagraph 28(2)(a)(i) or paragraph 34(6)(a) or 39(1)(a) or subparagraph 41(2)(a)(i).

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

re-allocation declaration means the *Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019*.

region has the same meaning as in the marketing plan.

register means the register of bidders maintained by the ACMA under section 44.

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

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

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

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

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

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

secondary stage means the rounds of the auction:

- (a) commencing with the first round for a residual lot of a product; and
- (b) ending immediately after the auction manager provides the results for the final round of the secondary stage in accordance with clauses 18 and 19 of Schedule 2.

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

size: see subsection 5(2).

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

spectrum access charges direction means the *Radiocommunications (Spectrum Access Charges)—26 GHz Band) Direction 2020*.

spectrum licence limits direction means the *Radiocommunications (Spectrum Licence Limits—26 GHz Band) Direction 2020*.

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

starting price, for a lot of a product, means the amount (in dollars) set by the ACMA for the lots of the product under paragraph 27(1)(a) or 37(1)(a), whichever is the case.

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

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

winning price: see subsection 65(1).

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

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

- ACCC
- ACMA
- frequency band
- licence
- radiocommunications device
- spectrum
- spectrum licence.

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

- (2) In this instrument, a reference to a part of the spectrum, a frequency band or a frequency range includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

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

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

5 Lots and products

- (1) In this instrument:

combined products means any one of the following:

- (a) Greater Perth combined products;
- (b) Hobart combined products;
- (c) Margaret River combined products.

designated area has the meaning given by subsection 4(1) of the spectrum licence limits direction.

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

Greater Perth lower band product means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency range 25.1 GHz to 27.0 GHz with respect to the region in item 25 in Table 1 set out in Schedule 3 to the marketing plan.

Note: See also the table item dealing with 26 GHz Greater Perth Lower in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with GPER01 in Table 1 set out in Schedule 2 to the marketing plan.

Greater Perth upper band product means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency

range 27.0 GHz to 27.5 GHz with respect to the regions in item 26 in Table 1 set out in Schedule 3 to the marketing plan.

Note: See also the table item dealing with 26 GHz Greater Perth Upper in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with GPER02 in Table 1 set out in Schedule 2 to the marketing plan.

Hobart combined products means the Hobart lower band product and Hobart upper band product.

Hobart lower band product means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency range 25.1 GHz to 27.0 GHz with respect to the region in item 27 in Table 1 set out in Schedule 3 to the marketing plan.

Note: See also the table item dealing with 26 GHz Hobart Lower in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with HOBA01 in Table 1 set out in Schedule 2 to the marketing plan.

Hobart upper band product means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency range 27.0 GHz to 27.5 GHz with respect to the region in item 27 in Table 1 set out in Schedule 3 to the marketing plan.

Note: See also the table item dealing with 26 GHz Hobart Upper in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with HOBA02 in Table 1 set out in Schedule 2 to the marketing plan.

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

Note: In Schedule 2, for the meaning of *lot*, see subclause 2(1) of that Schedule.

lower band product means any one of the following:

- (a) Greater Perth lower band product;
- (b) Hobart lower band product;
- (c) Margaret River lower band product.

Margaret River combined products means the Margaret River lower band product and Margaret River upper band product.

Margaret River lower band product means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency range 25.1 GHz to 27.0 GHz with respect to the region in item 28 in Table 1 set out in Schedule 3 to the marketing plan.

Note: See also the table item dealing with 26 GHz Margaret River Lower in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with MARG01 in Table 1 set out in Schedule 2 to the marketing plan.

Margaret River upper band product means the part of the spectrum identified as a product in the marketing plan, characterised by the frequency range 27.0 GHz to 27.5 GHz with respect to the region in item 28 in Table 1 set out in Schedule 3 to the marketing plan.

Note: See also the table item dealing with 26 GHz Margaret River Upper in Table 1 set out in Schedule 1 to the marketing plan and the table item dealing with MARG02 in Table 1 set out in Schedule 2 to the marketing plan.

product means a part or parts of the 26 GHz band identified as a product in the marketing plan, characterised by a frequency range and a region.

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

related lower band product means:

- (a) for the Greater Perth upper band product, the Greater Perth lower band product;
- (b) for the Hobart upper band product, the Hobart lower band product;
- (c) for the Margaret River upper band product, the Margaret River lower band product.

Note: The expression ***related lower band product*** is used for the purposes of the secondary stage in subparagraph 12(e)(iii) of Schedule 2 and for the purposes of the assignment stage in paragraph 4(4)(b) of Schedule 3.

related upper band product means:

- (a) for the Greater Perth lower band product, the Greater Perth upper band product;
- (b) for the Hobart lower band product, the Hobart upper band product;
- (c) for the Margaret River lower band product, the Margaret River upper band product.

Note: The expression ***related upper band product*** is used for the purposes of the secondary stage in clause 1A and subparagraphs 12(e)(ii) and (iv) of Schedule 2.

relevant combined products means:

- (a) for the Greater Perth lower band product and the Greater Perth upper band product, the Greater Perth combined products;
- (b) for the Hobart lower band product and the Hobart upper band product, the Hobart combined products;
- (c) for the Margaret River lower band product and the Margaret River upper band product, the Margaret River combined products.

Note: The expression ***relevant combined products*** is used for the purposes of the secondary stage in paragraph 1A(1)(b) of Schedule 2.

upper band product means any one of the following:

- (a) Greater Perth upper band product;
 - (b) Hobart upper band product;
 - (c) Margaret River upper band product.
- (2) The ***size*** of each lot of a product, when expressed in MHz, is the lot bandwidth set out for the product in the marketing plan, and the ***size*** or ***total size*** of lots of a product, when expressed in MHz, is the total bandwidth of those lots.

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

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

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

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

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

Note: See section 314A of the Act.

7 Giving documents to the ACMA

- (1) A document may be given to the ACMA under this instrument by:
- (a) delivering the document to the physical address specified in the applicant information package; or
 - (b) emailing the document to the email address specified in the applicant information package in accordance with subsection (2).

Note: Subsections 28(6), 34(8), 39(5) and 41(6) have additional requirements for a deed of financial security given by email.

- (2) If a document is emailed:
- (a) the document must be included as an attachment; and
 - (b) the document must be:
 - (i) if the document is a statutory declaration, statement under section 60, bank guarantee or deed – in a PDF format or another format approved by the auction manager; or
 - (ii) if the document is not a statutory declaration, statement under section 60, bank guarantee or deed – in a Word or PDF format or another format approved by the auction manager.
- (3) A deed of financial security may be given to the ACMA under this instrument as one or more deeds of financial security.

8 Statutory declaration for body corporate

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

9 Payment of amounts

- (1) An amount paid to the ACMA on behalf of the Commonwealth under this instrument must be paid in Australian currency.
- (2) An amount must be paid by bank cheque or by electronic transfer.
- (3) An electronic transfer of an amount must be made by any of the following:
- (a) direct transfer into the bank account with the following details:
 - (i) Bank—ANZ Bank;
 - (ii) Branch—Belconnen;
 - (iii) BSB number—012-951;
 - (iv) Account number—8379 24272;
 - (v) Account name—ACMA Official Administered Receipts;
 - (b) BPay payment:

- (i) only if, under Schedule 4, a winning bidder has been notified by the ACMA of the bidder's balance of the winning price; and
 - (ii) using the electronic payment scheme called BPAY operated in co-operation between Australian financial institutions, which enables a person to make a payment to the ACMA, on behalf of the Commonwealth, as a participant in BPAY, either via telephone or internet access;
- (c) credit card payment:
 - (i) only if, under Schedule 4, a winning bidder has been notified by the ACMA of the bidder's balance of the winning price; and
 - (ii) into the bank account with the details set out in paragraph (a).
- (4) An amount is taken to have been paid by a deadline specified in this instrument if:
 - (a) the ACMA receives a bank cheque for the full amount on or before the deadline; or
 - (b) both:
 - (i) the ACMA receives evidence that an electronic transfer of the full amount was made on or before the deadline (such as a transfer receipt); and
 - (ii) the amount is received in the ACMA's bank account no later than 3 working days after the deadline; or
 - (c) the ACMA receives other evidence which satisfies the ACMA that the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.
- (5) An amount due under this instrument is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the amount due.

Note: The effect of subsection (5) is that an applicant or bidder must add the value of any bank charge or government duty to the amount of a payment.

- (6) If an amount payable under this instrument is not an amount of whole dollars, the amount is rounded up to the next dollar.

Note: This section relates to Division 2 of Part 6 to the extent that it applies to spectrum access charges payable under section 294 of the Act and, to that extent, is disallowable under section 42 of the *Legislation Act 2003*.

Part 2—Limits on allocation of spectrum

Division 1 Allocation limits

10 Interpretation

In this Part:

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

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

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

11 Meaning of *allocation limits*

- (1) In this instrument, a reference to the *allocation limits* is a reference to the requirement that the allocation of spectrum licences under this instrument must not result in a person or specified group of persons having permission to use more spectrum in the 26 GHz band than a limit set out in section 12.

Note: The Minister has given a direction to the ACMA, under subsection 60(10) of the Act, that limits be imposed on the aggregate of the parts of the spectrum in the 26 GHz band that may be used by a person or specified group of persons as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act in the 26 GHz band that is enabled by the re-allocation declaration in each designated area. See the spectrum licence limits direction.

- (2) In this instrument, for the purpose of assessing the application of the allocation limits to a product, each of the following are to be treated as a single product:
- (a) the Greater Perth combined products;
 - (b) the Hobart combined products;
 - (c) the Margaret River combined products.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

12 Allocation limits

No person or specified group of persons may, as a result of the allocation of a spectrum licence under this instrument, use more than an aggregate of 1 GHz of the 26 GHz band in each designated area.

Division 2 Associates, specified group of persons and affiliations

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

(1) In this instrument:

associate means:

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

Note: The part of the spectrum referred to in the re-allocation declaration is the frequency band 25.1 GHz to 27.5 GHz.

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

- (a) whether formal or informal, or partly formal and partly informal; and
- (b) whether written or oral, or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

other than a roaming services agreement or an agreement between carriers provided for by or under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.

(3) In this instrument:

specified group of persons means either of the following:

- (a) a person and all associates of that person;

- (b) subject to subsection (4) – any 2 or more groups referred to in paragraph (a) that have at least one member in common.
- (4) For the purposes of paragraph (b) of the definition of *specified group of persons* in subsection (3), an individual is taken not to be a member in common between 2 or more groups that are comprised of a person (the *relevant person*) and the associates of that relevant person where all of the following apply:
 - (a) the individual is providing services as a company secretary (the *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 (the *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.

14 Affiliation between applicants or bidders

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

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

15 Information relevant to considering whether applicants or bidders are affiliated

- (1) When considering under this instrument whether 2 or more applicants or bidders are affiliated the ACMA must have regard to:
 - (a) completed application forms given under paragraph 28(1)(a) or paragraph 34(2)(a) or paragraph 41(1)(a); and
 - (b) updated application forms given under subsection 39(4); and
 - (c) statutory declarations and statements made under this instrument.
- (2) The ACMA may have regard to any other information that it considers relevant.

Part 3—Confidentiality

16 Meaning of *confidential information*

In this instrument:

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

- (a) documents the applicant or bidder has given to the ACMA for the purposes of the auction; and
- (b) information provided to the bidder under section 45 for the purpose of participating in the auction; and
- (c) a provisional start demand of the applicant; and
- (d) a start demand of the bidder for a clock round of the primary stage; and
- (e) a posted demand of the bidder for a clock round of the primary stage; and
- (f) a bid made by the bidder in the auction; and
- (g) a proposed bid by the applicant or bidder or a bid under consideration by the applicant or bidder; and
- (h) a proposed provisional start demand or proposed start demand by the applicant or bidder or a proposed provisional start demand or proposed start demand under consideration by the applicant or bidder; and
- (i) the applicant's or bidder's bidding strategy; and
- (j) the amount the applicant or bidder is willing to pay for:
 - (i) a lot or combination of lots; or
 - (ii) a part or parts of the spectrum; and
- (k) information that, if disclosed, could be reasonably expected to affect or be capable of affecting:
 - (i) bids made or proposed to be made by another applicant or bidder; or
 - (ii) provisional start demands or proposed provisional start demands by another applicant; or
 - (iii) start demands or proposed start demands by another applicant or bidder; or
 - (iv) another applicant's or bidder's bidding strategy; and
- (l) information that, if disclosed, could be reasonably expected to affect, or be capable of affecting, the outcome of the auction.

17 Obligation to not disclose confidential information

- (1) An applicant or bidder, or a related person who has knowledge of the applicant's or bidder's confidential information, or a contractor of an applicant or bidder who has knowledge of the applicant's or bidder's confidential information, must not, either directly or indirectly, disclose the applicant's or bidder's confidential information about the auction to any person.

- (2) Subsection (1) does not prohibit an applicant or bidder, or a related person of an applicant or bidder, or a contractor of an applicant or bidder, disclosing information about the auction:
- (a) for the purpose of obtaining advice relating to the auction from a person in the person's professional capacity; or
 - (b) for the purpose of obtaining finance to make a payment in relation to spectrum licences in the auction; or
 - (c) to the ACMA; or
 - (d) for an applicant or bidder – to a related person of that applicant or bidder; or
 - (e) for a related person of an applicant or bidder – to that applicant or bidder, or to another related person of the same applicant or bidder; or
 - (f) for a contractor of an applicant or bidder – to that applicant or bidder, or to a related person of the same applicant or bidder; or
 - (g) for the purpose of announcing or publishing that the applicant or bidder is participating in the auction;
 - (h) as authorised by this instrument or as otherwise required by law.

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

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

18 Duration of confidentiality obligation

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

- (a) the applicant, as a withdrawn applicant, is notified under section 63 that the applicant's confidentiality obligation is at an end; or
- (b) for a bidder (whether or not a winning bidder), the ACMA announces or publishes the information mentioned in subsection 69(1) (after winning bidders are notified in accordance with subsection 69(2)).

19 Reporting breach of confidentiality

An applicant or bidder, or a related person of an applicant or bidder, or a contractor of an applicant or bidder, who:

- (a) discloses confidential information in breach of section 17; or
- (b) receives the confidential information of another applicant or bidder;

must report the disclosure or receipt in writing to the ACMA as soon as possible, but no later than 2 working days after becoming aware the disclosure or receipt has occurred.

20 Notice of breach of confidentiality

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

21 Deed of confidentiality required from related persons and contractors

- (1) A related person of an applicant or bidder who has knowledge of the applicant's or bidder's confidential information must give the ACMA a deed of confidentiality if the person is:
 - (a) an employee of the applicant or bidder; or
 - (b) an employee of a related body corporate of the applicant or bidder that provides services to the applicant or bidder.
- (2) A contractor of an applicant or bidder who has knowledge of the applicant's or bidder's confidential information must give the ACMA a deed of confidentiality.
- (3) Subsection (2) does not apply to a contractor under a contract:
 - (a) for the purpose of obtaining advice relating to the auction from a person in the person's professional capacity; or
 - (b) for the purpose of obtaining finance to make a payment in relation to spectrum licences in the auction.
- (4) If a person to whom paragraph (1)(a) or (1)(b) or subsection (2) applies receives knowledge of the applicant's confidential information before the application deadline or new application deadline (if there is one), the person must give the ACMA the deed of confidentiality before the relevant deadline.

Note: A deed of confidentiality form must be provided by the ACMA as part of the applicant information package on the ACMA's website at www.acma.gov.au, see paragraphs 25(1)(h) and 26(1)(h).

Part 4—Procedures before auction

Division 1 Preliminary

22 Auction manager

The ACMA must, in writing, appoint:

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

to manage the auction.

23 Setting application fee

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

24 Application fee and withdrawal on variation of starting prices

- (1) Subject to subsection (2), an application fee paid under this instrument is not refundable in any circumstances, including if an applicant or bidder withdraws, or is taken to withdraw, from the auction, or is not permitted to make a bid in the auction.
- (2) An application fee paid under this instrument is refundable if the ACMA varies a starting price under paragraph 37(1)(a) and an applicant withdraws its application before the extended eligibility deadline by giving the ACMA notice in writing.
- (3) If subsection (2) applies to an applicant, the ACMA on behalf of the Commonwealth must refund the application fee no later than 6 months after the applicant withdraws its application.

Division 2 Advertising the auction

25 Advertising of auction by the ACMA

- (1) The ACMA must publish on its website a notice that:
 - (a) describes the parts of the spectrum to be auctioned; and
 - (b) gives a brief description of the way the auction will be conducted; and
 - (c) states that the auction will be conducted in accordance with this instrument; and
 - (d) invites persons to apply to the ACMA to take part in the auction; and
 - (e) states the date and time (the *application deadline*) before which:
 - (i) completed application forms, completed deeds of acknowledgement and completed deeds of confidentiality by applicants must be received by the ACMA; and

- (ii) the application fee must be paid to the ACMA on behalf of the Commonwealth; and
 - (f) states the date and time (the *eligibility deadline*) before which:
 - (i) completed eligibility nomination forms must be received by the ACMA; and
 - (ii) eligibility payments must be made to the ACMA on behalf of the Commonwealth, or deeds of financial security must be given to the ACMA on behalf of the Commonwealth, or a combination of both; and
 - (g) states that applications may only be withdrawn before the eligibility deadline or extended eligibility deadline (if there is one); and
 - (h) states that the applicant information package for the auction can be obtained from the ACMA's website at the electronic address given in the notice.
- (2) If a matter mentioned in the notice changes, the ACMA must publish another notice giving details of the change on its website.
- (3) The ACMA may publish the information required by subsections (1) and (2) by additional methods, and may publish other information about the auction by any method.

26 Applicant information package

- (1) The applicant information package must contain the following information:
- (a) the re-allocation declaration;
 - (b) the spectrum licence limits direction;
 - (c) the marketing plan;
 - (d) this instrument;
 - (e) a guide to the auction;
 - (f) an application form approved by the ACMA, with instructions for completing and giving the application form to the ACMA;
 - (g) a deed of acknowledgement form approved by the ACMA, that includes a statement to the effect that an applicant understands and agrees to be bound by the provisions of this instrument;
 - (h) a deed of confidentiality form approved by the ACMA, that includes a statement that an applicant, or a related person of an applicant, or a contractor of an applicant, agrees not to disclose confidential information before section 17 ceases to apply to the relevant applicant or related person or contractor;
 - (i) the amount of the application fee for the auction;
 - (j) the application deadline, noting this may subsequently be replaced if there is a new application deadline;
 - (k) statutory declaration forms under section 31, paragraph 34(5)(c) and section 42, and the form for a statement under section 60, for the purposes of this instrument;
 - (l) an eligibility nomination form approved by the ACMA, with instructions for completing and giving the eligibility nomination form to the ACMA;
 - (m) a deed of financial security form approved by the ACMA;

- (n) information about making an eligibility payment, or giving a deed of financial security, or both making an eligibility payment and giving a deed of financial security, for an applicant to secure maximum eligibility points;
 - (o) the eligibility deadline, noting this may subsequently change if there is an extended eligibility deadline;
 - (p) advice that the eligibility deadline or extended eligibility deadline (if there is one), is the last time for withdrawal from the auction;
 - (q) the physical address for giving documents to the ACMA;
 - (r) the email address for giving documents to the ACMA;
 - (s) the spectrum access charges direction.
- (2) The applicant information package may also contain other information about the auction.
- (3) The ACMA must publish the applicant information package on its website as soon as practicable after notice of the auction is published under subsection 25(1).
- (4) If the ACMA makes any change to the contents of the applicant information package after it is published, the ACMA must publish a notice giving details of the change on its website.

27 Starting prices, lot ratings and minimum spectrum requirements

- (1) The ACMA must set the following amounts:
- (a) the starting price for the lots of each product in the auction;
 - (b) the lot rating for the lots of each product in the auction;
 - (c) the options for the minimum spectrum requirement (including provisional minimum spectrum requirement), in lots, that an applicant may select for lots of a product in the auction.
- Note: Paragraph (a) relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.
- (2) After setting the amounts mentioned in paragraphs (1)(a), (1)(b) and (1)(c), the ACMA must approve an application form and eligibility nomination form.
- (3) The ACMA must ensure that the eligibility nomination form includes a requirement for and a guide to:
- (a) specifying the number of lots of each product desired by an applicant as the provisional start demands of the applicant before the pre-bidding phase of the primary stage, at the starting price for the lots of the product; and
 - (b) calculating and specifying the maximum eligibility points of an applicant based on the specified provisional start demands of the applicant; and
 - (c) in relation to the lots of each product, either:
 - (i) not selecting a provisional minimum spectrum requirement; or

- (ii) selecting only one option as the provisional minimum spectrum requirement;
for the lots of each product.
- (4) The ACMA must publish the amounts set under subsection (1) and the application form and eligibility nomination form on its website as soon as practicable after notice of the auction is published under subsection 25(1).

Division 3 Application to participate in the auction

28 Making an application

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

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

- (2) After the application deadline and no later than the eligibility deadline, an applicant must:
 - (a) give the ACMA a completed eligibility nomination form, which:
 - (i) specifies the number of lots of each product desired by the applicant as valid provisional start demands of the applicant before the pre-bidding phase of the primary stage, at the starting price for the lots of the product; and
 - (ii) specifies the maximum eligibility points of the applicant, based on the specified provisional start demands; and
 - (iii) in relation to each product, either does not select a provisional minimum spectrum requirement, or selects only one option as the provisional minimum spectrum requirement, for the lots of each product; and
 - (b) in accordance with section 36, do one of the following:
 - (i) make an eligibility payment of an amount to the ACMA on behalf of the Commonwealth;
 - (ii) give the ACMA on behalf of the Commonwealth a deed of financial security, for an amount;
 - (iii) make an eligibility payment of part of an amount and give a deed of financial security for the remainder.

Note: For information on how an eligibility payment is made, see section 9. For information on how a deed of financial security is given, see section 7 and subsections 36(7) and 36(8).

- (3) For paragraph (2)(b), **amount**, in relation to a person, has the meaning given by subsection 36(2).

- (4) Subject to subsection 39(1), if, before the eligibility deadline, an applicant has not:
- (a) given the ACMA a completed eligibility nomination form; and
 - (b) made an eligibility payment to the ACMA on behalf of the Commonwealth, or given a deed of financial security to the ACMA on behalf of the Commonwealth, or a combination of both;
- in accordance with subsection (2), the applicant is taken to have withdrawn its application.
- (5) Subject to subsections 39(3) and 39(4), an applicant may give the ACMA an updated document:
- (a) for paragraph (1)(a), (1)(b) or (1)(c) – at any time until the application deadline, but not after the application deadline; or
 - (b) for paragraph (2)(a), or subparagraph (2)(b)(ii) or (2)(b)(iii) – at any time until the eligibility deadline, but not after the eligibility deadline.
- (6) If a deed of financial security (for subparagraph (2)(b)(ii) or (2)(b)(iii)) is given to the ACMA on behalf of the Commonwealth by email before the eligibility deadline, the original deed must be received by the ACMA no later than 3 working days after the eligibility deadline (or, if the ACMA agrees to a later time, the agreed time) for the application to be valid.

29 Provisional start demand validity rules for application

(1) For the purposes of subparagraph 28(2)(a)(i) or paragraph 34(6)(a) or paragraph 39(1)(a) or subparagraph 41(2)(a)(i), a provisional start demand of an applicant for lots of a product is valid if both of the following apply in relation to the provisional start demand:

- (a) the total size of the lots of the product for the provisional start demand does not exceed the applicant's allocation limits (when expressed in MHz):
 - (i) applicable to the product, other than a lower band product and an upper band product; or
 - (ii) applicable to any one of the combined products; and
- (b) the number of lots for the applicant's provisional start demand of the product is not greater than the number of lots for the supply of the product.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

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

30 Applicants to notify ACMA if application information incorrect

- (1) If an applicant knows that any of the information in the application is incorrect, or has become incorrect, the applicant must immediately give the ACMA the correct information.
- (2) The auction manager may correct the information in the application if the auction manager is satisfied that the information is incorrect, such as it containing a clerical error or an obvious mistake or omission.

31 Applicant to make statutory declaration

- (1) After the application deadline, the ACMA must:
 - (a) give each applicant details about the identity of all other applicants, and the persons identified as the associates of other applicants; and
 - (b) ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant and, if so, identifying the other applicant and giving details of the affiliation.
- (2) The ACMA must state a deadline, at least 10 working days after the date of the request, before which the statutory declaration must be received by the ACMA.

32 Failure to give statutory declaration

If an applicant does not give the ACMA a statutory declaration in accordance with section 31, the applicant is taken to have withdrawn its application.

33 Procedure if ACMA satisfied applicants are affiliated

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

34 Requirements for new application

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

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

- (3) If the ACMA receives a completed application form and application fee under subsection (2), the ACMA must give each applicant (including the new applicant) updated details about the identity of all other applicants, and the persons identified as the associates of other applicants.
- (4) The updated information does not need to include those applicants who have already withdrawn.
- (5) The new applicant must, no later than 3 working days after the ACMA gives the new applicant the updated information (or, if the ACMA agrees to a later time, the agreed time):
 - (a) give the ACMA a deed of acknowledgement executed by the applicant; and
 - (b) give the ACMA a deed of confidentiality executed by the applicant; and
 - (c) make and give the ACMA a statutory declaration that the new applicant is not affiliated with any other applicant mentioned in the updated information.
- (6) The new applicant must, no later than the eligibility deadline or extended eligibility deadline (if there is one), whichever is the case (or, if the ACMA agrees to a later time, the agreed time):
 - (a) give the ACMA:
 - (i) a completed eligibility nomination form, which includes the matters set out in paragraph 28(2)(a); or
 - (ii) a completed updated eligibility nomination form, which includes the matters set out in paragraph 41(2)(a); and
 - (b) in accordance with section 36, do one of the following:
 - (i) make an eligibility payment of an amount to the ACMA on behalf of the Commonwealth;
 - (ii) give the ACMA on behalf of the Commonwealth a deed of financial security, for an amount;
 - (iii) make an eligibility payment of part of an amount and give a deed of financial security for the remainder.

Note: For information on how an eligibility payment is made, see section 9. For information on how a deed of financial security is given, see section 7 and subsections 36(7) and 36(8).

- (7) For paragraph (6)(b), **amount**, in relation to a person, has the meaning given by subsection 36(2).
- (8) If a deed of financial security (for subparagraph (6)(b)(ii) or (6)(b)(iii)) is given to the ACMA on behalf of the Commonwealth by email before the eligibility deadline or extended eligibility deadline (if there is one), whichever is the case, the original deed must be received by the ACMA no later than 3 working days after the relevant deadline (or, if the ACMA agrees to a later time, the agreed time) for the application to be valid.
- (9) The ACMA must not accept a new application under this section unless it is satisfied that the new applicant is not affiliated with any applicant who has not withdrawn, including another new applicant.

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

35 Maximum eligibility points and selecting provisional minimum spectrum requirements

- (1) The maximum eligibility points that an applicant may specify in its completed eligibility nomination form (or updated eligibility nomination form) is the sum of the lot ratings for the number of lots of each product to be auctioned, up to the applicant's allocation limits (when expressed in eligibility points):
 - (a) applicable to the product, other than a lower band product and an upper band product; or
 - (b) applicable to any one of the combined products.

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

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

- (2) The provisional minimum spectrum requirements for the lots of each product to be auctioned that an applicant may select in its completed eligibility nomination form must be from the options set by the ACMA under paragraph 27(1)(c). If a selection is not made for a product, the applicant is taken to have no provisional minimum spectrum requirement for the lots of that product.

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

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

- (1) An applicant must, before the eligibility deadline or extended eligibility deadline (if there is one), secure the applicant's maximum eligibility points by:
 - (a) making an eligibility payment of an amount to the ACMA on behalf of the Commonwealth; or
 - (b) giving the ACMA on behalf of the Commonwealth a deed of financial security, which has been completed in the approved form and executed, for an amount; or
 - (c) making an eligibility payment of part of an amount and giving a deed of financial security for the remainder.

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

- (2) The **amount** (when expressed in dollars) required to secure the maximum eligibility points specified by the applicant in its completed eligibility nomination form (or updated eligibility nomination form) is 10% of the sum of, for each product, the amount calculated by multiplying the provisional start demand (when expressed in lots) for a product, as specified in the relevant form, by the starting price for the lots of that product.
- (3) If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount less than the amount under subsection (2), the ACMA must, in writing, notify the applicant that:
 - (a) the applicant has made an eligibility payment or given a deed of financial security (or both), whichever is the case, for less than the amount under subsection (2); and
 - (b) the applicant must, before the eligibility deadline or extended eligibility deadline (if there is one), or no later than 3 working days after the date of the notice, whichever is the later, make an eligibility payment or give a deed of financial security (or both) for the remainder of the amount under subsection (2).
- (4) If the applicant does not comply with the notice given under subsection (3):
 - (a) subject to paragraph (c), the maximum eligibility points secured by the applicant is calculated by dividing the amount in subsection (3) by the amount in subsection (2), and multiplying that quotient by the maximum eligibility points specified by the applicant in its completed eligibility nomination form (or updated eligibility nomination form), and rounding down the result to the nearest whole point or zero if there is no remaining whole point; and
 - (b) the provisional start demands of the applicant are reduced commencing with a lot or lots of a product with the lowest lot rating being removed from the applicant's provisional start demands until the sum of the lot ratings for the remaining provisional start demands of the applicant is not greater than the maximum eligibility points secured by the applicant calculated under paragraph (a); and
 - (c) if, after the steps in paragraphs (a) and (b) are taken, the difference between:

- (i) the maximum eligibility points secured by the applicant (the ***provisional secured points***); and
 - (ii) the sum of the lot ratings for the number of lots of each product for which the applicant has a provisional start demand; is greater than zero – that difference is subtracted from the provisional secured points to give the number of maximum eligibility points secured by the applicant.
- (5) If:
 - (a) no eligibility points, as a result of paragraph (4)(a) or (4)(c), remain; or
 - (b) no provisional start demands, as a result of paragraph (4)(b), remain; the applicant is taken to have withdrawn its application.
- (6) The ACMA must:
 - (a) if an applicant has had its maximum eligibility points and provisional start demands calculated in accordance with subsection (4) – enter the amounts calculated for the applicant in the register and tell the applicant in writing; or
 - (b) if an applicant is taken to have withdrawn its application under subsection (5) – tell the applicant in writing.
- (7) A deed of financial security must be executed by:
 - (a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or
 - (b) a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*; or
 - (c) a Lloyd’s underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*.
- (8) If a deed of financial security is executed by a person acting under a power of attorney for a body corporate, the applicant must give the ACMA a copy of the power of attorney with the deed.
- (9) An applicant is taken to have withdrawn its application if:
 - (a) 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
 - (b) the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in subsection (7).
- (10) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (9).

Division 5 Extension of deadlines and related requirements

37 Varying starting prices, lot ratings and deadlines

- (1) Not less than 5 working days before the eligibility deadline, the ACMA may:
 - (a) vary a starting price set under paragraph 27(1)(a); and

- (b) if a starting price is varied, vary a lot rating set under paragraph 27(1)(b).

Note: Varying a starting price set under paragraph 27(1)(a) relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act. Accordingly, paragraph 37(1)(a) is disallowable under section 42 of the *Legislation Act 2003*.

- (2) When making any variations under subsection (1), the ACMA must:
- (a) state a later date and time to replace the application deadline, as the new application deadline, which must be 20 working days after the date of the variations; and
 - (b) vary the eligibility deadline by stating a later date and time as the extended eligibility deadline, which must be at least 20 working days after the eligibility deadline.
- (3) After making any variations under subsections (1) and (2), the ACMA must approve an updated eligibility nomination form.
- (4) The ACMA must ensure that the updated eligibility nomination form includes a requirement for and a guide to:
- (a) specifying the number of lots of each product desired by an applicant as the provisional start demands of the applicant before the pre-bidding phase of the primary stage, at the starting price for the lots of the product; and
 - (b) calculating and specifying the maximum eligibility points of an applicant based on the specified provisional start demands of the applicant; and
 - (c) in relation to each product, either:
 - (i) not selecting a provisional minimum spectrum requirement; or
 - (ii) selecting only one option as the provisional minimum spectrum requirement;for the lots of each product.
- (5) The ACMA must as soon as practicable after making any variations under subsection (1) publish, on its website:
- (a) a notice of the amounts set under paragraphs (1)(a) and (1)(b); and
 - (b) a notice of the date and time of the new application deadline; and
 - (c) a notice of the date and time of the extended eligibility deadline; and
 - (d) the updated eligibility nomination form, with instructions for completing and giving the updated eligibility nomination form to the ACMA.

38 Notice of updated documents

The ACMA must as soon as practicable after making any variations under subsections 37(1) and 37(2) notify any applicants, in writing, that:

- (a) they must, before the extended eligibility deadline, give the ACMA a completed updated eligibility nomination form; and
- (b) they may, before the extended eligibility deadline, do any of the following:
 - (i) make an additional eligibility payment to the ACMA on behalf of the Commonwealth for the purposes of section 36;
 - (ii) update their deeds of financial security for the purposes of section 36;if necessary; and
- (c) they may, before the new application deadline, give the ACMA an updated application form, if necessary.

39 Giving of updated documents and updating financial security

- (1) No later than the extended eligibility deadline, an applicant must give the ACMA a completed updated eligibility nomination form, which:
 - (a) specifies the number of lots of each product desired by the applicant as valid provisional start demands of the applicant before the pre-bidding phase of the primary stage, at the starting price for the lots of the product; and
 - (b) specifies the maximum eligibility points of the applicant, based on the specified provisional start demands; and
 - (c) in relation to each product, either does not select a provisional minimum spectrum requirement, or selects only one option as the provisional minimum spectrum requirement, for the lots of each product.
- (2) If an applicant does not give the ACMA a completed updated eligibility nomination form, in accordance with subsection (1), the applicant is taken to have withdrawn its application.
- (3) No later than the extended eligibility deadline, an applicant may do any of the following:
 - (a) make an additional eligibility payment to the ACMA on behalf of the Commonwealth for the purposes of section 36;
 - (b) update its deed of financial security for the purposes of section 36.

Note 1: If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount less than the amount under subsection 36(2), see subsections 36(3) to 36(6).

Note 2: If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount more than the amount under subsection 36(2), see subsection 63(2) or 64(2) or paragraph 67(1)(a) for refund of the whole or part of the eligibility payment. Otherwise, see subsection 65(2) in relation to calculating the balance of the winning price.
- (4) No later than the new application deadline, an applicant may give the ACMA an updated application form.

- (5) If a deed of financial security (for paragraph (3)(b)) is given to the ACMA on behalf of the Commonwealth by email before the extended eligibility deadline, the original deed must be received by the ACMA no later than 3 working days after the extended eligibility deadline (or, if the ACMA agrees to a later time, the agreed time) for the application under subsection 28(1) or 34(2) to be valid.

40 Notice inviting new applicants to the auction

- (1) As soon as practicable after making any variations under subsections 37(1) and (2) the ACMA must publish on its website a notice that:
- (a) invites persons, who are not already applicants, to apply to the ACMA to take part in the auction; and
 - (b) states the date and time, being the new application deadline, before which:
 - (i) completed application forms, completed deeds of acknowledgement and completed deeds of confidentiality by new applicants must be received by the ACMA; and
 - (ii) the application fee must be paid to the ACMA on behalf of the Commonwealth; and
 - (c) states the date and time, being the extended eligibility deadline, before which:
 - (i) completed eligibility nomination forms (being updated eligibility nomination forms) must be received by the ACMA; and
 - (ii) eligibility payments must be made to the ACMA on behalf of the Commonwealth, or deeds of financial security must be given to the ACMA on behalf of the Commonwealth, or a combination of both; and
 - (d) states that applications may only be withdrawn before the extended eligibility deadline; and
 - (e) states that the applicant information package (with changes to the contents as a result of any variations under section 37) for the auction can be obtained from the ACMA's website at the electronic address given in the notice.
- (2) If a matter mentioned in the notice changes, the ACMA must publish another notice giving details of the change on its website.
- (3) The ACMA may publish the information required by subsections (1) and (2) by additional methods, and may publish other information about the auction by any method.

41 Making a new application

- (1) A person, who is not already an applicant (including a withdrawn applicant), may apply to become registered as a bidder in the auction by:
- (a) giving the ACMA a completed application form; and
 - (b) giving the ACMA a deed of acknowledgement executed by the applicant; and
 - (c) giving the ACMA a deed of confidentiality executed by the applicant; and

- (d) paying the application fee;
before the new application deadline.

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

- (2) After the new application deadline and no later than the extended eligibility deadline, a new applicant must:
 - (a) give the ACMA a completed eligibility nomination form (being an updated eligibility nomination form), which:
 - (i) specifies the number of lots of each product desired by the applicant as valid provisional start demands of the applicant before the pre-bidding phase of the primary stage, at the starting price for the lots of the product; and
 - (ii) specifies the maximum eligibility points of the applicant, based on the specified provisional start demands; and
 - (iii) in relation to each product, either does not select a provisional minimum spectrum requirement, or selects only one option as the provisional minimum spectrum requirement, for the lots of each product; and
 - (b) in accordance with section 36, do one of the following:
 - (i) make an eligibility payment of an amount to the ACMA on behalf of the Commonwealth;
 - (ii) give the ACMA on behalf of the Commonwealth a deed of financial security, for an amount;
 - (iii) make an eligibility payment of part of an amount and give a deed of financial security for the remainder.

Note: For information on how an eligibility payment is made, see section 9. For information on how a deed of financial security is given, see section 7 and subsections 36(7) and 36(8).

- (3) For paragraph (2)(b), **amount**, in relation to a person, has the meaning given by subsection 36(2).
- (4) If, before the extended eligibility deadline, a new applicant has not:
 - (a) given the ACMA a completed eligibility nomination form (being an updated eligibility nomination form); and
 - (b) made an eligibility payment to the ACMA on behalf of the Commonwealth, or given a deed of financial security to the ACMA on behalf of the Commonwealth, or a combination of both;in accordance with subsection (2), the applicant is taken to have withdrawn its application.
- (5) A new applicant may give the ACMA an updated document:
 - (a) for paragraph (1)(a), (1)(b) or (1)(c) – at any time until the new application deadline, but not after the new application deadline; or
 - (b) for paragraph (2)(a), or subparagraph (2)(b)(ii) or (2)(b)(iii) – at any time until the extended eligibility deadline, but not after the extended eligibility deadline.

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

42 Statutory declarations and affiliations

- (1) If the ACMA receives a completed application form, deed of acknowledgement, deed of confidentiality and application fee from a new applicant under subsection 41(1), the ACMA must, after the new application deadline:
 - (a) give each applicant (including new applicants) updated details about the identity of all other applicants, and the persons identified as the associates of other applicants; and
 - (b) ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant and if so, identifying the other applicant and giving details of the affiliation.
- (2) The updated information does not need to include those applicants who have already withdrawn.
- (3) The ACMA must state a deadline, at least 10 working days after the date of the request, before which the statutory declaration must be received by the ACMA.
- (4) If an applicant does not give the ACMA a statutory declaration in accordance with subsection (3), the applicant is taken to have withdrawn its application.
- (5) If the ACMA is satisfied that two or more applicants are affiliated, the procedures in sections 33 and 34 apply.

Division 6 Withdrawal of applicant

43 Withdrawal of applicant

- (1) An applicant may withdraw its application before the eligibility deadline or extended eligibility deadline (if there is one), by giving the ACMA notice in writing.
- (2) If an applicant who withdraws its application under subsection (1), or who is taken to have withdrawn its application under another provision of this instrument, has made an eligibility payment under subsection 28(2) or 34(6) or 41(2) and in accordance with section 36, or an additional eligibility payment under subsection 39(3) for the purposes of section 36, the ACMA on behalf of the Commonwealth must refund the eligibility payment (including any additional eligibility payment) within the period specified in subsection 63(2).
- (3) Subsection (2) is subject to sections 75 and 77.
- (4) An applicant may not withdraw its application after the later of the eligibility deadline or extended eligibility deadline (if there is one).

- (5) Subject to subsection 41(1), an applicant must not be re-admitted to the auction after withdrawing, or being taken to have withdrawn, its application.

Division 7 Registration of bidders

44 Register of bidders

- (1) The ACMA must maintain a register of bidders in the auction in electronic form.
- (2) For each bidder, the register must contain the following:
- (a) the bidder's name;
 - (b) the bidder's postal address;
 - (c) the bidder's email address;
 - (d) the bidder's telephone number;
 - (e) the name, position, postal address, email address and telephone number of a contact person for the bidder;
 - (f) the bidder's provisional start demands for the lots of each product;
 - (g) the bidder's maximum eligibility points;
 - (h) the bidder's provisional minimum spectrum requirements (if any) for the lots of each product;
 - (i) the bidder's allocation limits for the lots of the following:
 - (i) each product, other than the lower band products and the upper band products;
 - (ii) each of the combined products;
 - (j) the bidder's ABN, ACN or ARBN;
 - (k) the names of the bidder's associates and the nature of their association with the bidder.
- (3) The register may also contain any other information that the ACMA considers necessary or convenient to conduct the auction.
- (4) The ACMA must make changes to the register as soon as practicable after:
- (a) a bidder tells the ACMA of a change in the bidder's name or contact information, including a change of information for the bidder's contact person; or
 - (b) the ACMA otherwise becomes aware that any of the information on the register is not correct.

45 Registration process

- (1) The ACMA must register a person as a bidder in the auction if and only if:
- (a) the later of the eligibility deadline or extended eligibility deadline (if there is one) has passed; and
 - (b) the person has:
 - (i) made a valid application under section 28 or 34 or 41, including updating a valid application under section 39 or another provision of this instrument; and

- (ii) made an eligibility payment (including an additional eligibility payment) or given the ACMA on behalf of the Commonwealth a deed of financial security under, or for the purposes of, section 36, or any combination of these; and
 - (c) the person has not withdrawn, and is not taken to have withdrawn, its application; and
 - (d) if a deed of financial security is given – the ACMA is satisfied that the person who executed the deed is a person mentioned in subsection 36(7).
- (2) After the later of the eligibility deadline or extended eligibility deadline (if there is one), the ACMA must tell a bidder in writing that the bidder has been registered and may participate in the auction, and give the bidder the following:
 - (a) a copy of the information recorded on the register for the bidder;
 - (b) the ACMA's email address and telephone number available for use by bidders;
 - (c) information about accessing and using the auction system;
 - (d) information about making entries in the auction system during the pre-bidding phase;
 - (e) information about making bids in the auction system during the primary stage, secondary stage (if any) and assignment stage;
 - (f) information about how to make an entry and a bid by alternative methods if the bidder is unable to make an entry or a bid using the auction system.

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

46 Bidders to notify ACMA if register incorrect

- (1) If a bidder knows that any of the information about the bidder or the bidder's associates on the register is incorrect, the bidder must immediately give the ACMA the correct information.
- (2) The auction manager may correct the information on the register if the auction manager is satisfied that the information is incorrect, such as it containing a clerical error or an obvious mistake or omission.

Division 8 Preparation for bidding and scheduling rounds of the auction

47 Preparation for bidding

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

48 Security of the auction

- (1) A bidder must ensure that any information and items provided to the bidder for the purpose of accessing the auction system are kept secure during the auction period.

- (2) The bidder must notify the ACMA immediately if any information or item provided to the bidder for the purpose of accessing the auction system is lost or stolen during the auction period.

49 Auction rounds

- (1) The rounds of the auction for the primary stage, secondary stage and assignment stage are to be scheduled.
- (2) The first clock round of the primary stage of the auction starts on the date and time for that clock round set by the auction manager under paragraph 50(1)(a).

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

- (1) After the later of the eligibility deadline or extended eligibility deadline (if there is one), the auction manager must:
 - (a) set the start date and start time of the first and second clock rounds of the primary stage of the auction; and
 - (b) set a period of at least 3 hours (the *pre-bidding phase*), which must start not more than 48 hours before the start date and start time of the first clock round of the primary stage of the auction, within which a bidder may, using the auction system:
 - (i) enter the bidder's actual start demands, by changing or confirming the bidder's provisional start demands, for the lots of each product for the first clock round of the primary stage; and
 - (ii) enter the bidder's actual minimum spectrum requirements (if any), by changing or confirming the bidder's provisional minimum spectrum requirements (if any), for the lots of each product for the primary stage.
- (2) At least 10 working days before the start date of the first clock round of the primary stage of the auction, the auction manager must notify bidders of:
 - (a) the start date and start time of the first and second clock rounds of the primary stage; and
 - (b) the start date and start time of the pre-bidding phase.

Part 5—Auction procedures

Division 1 Procedures to be applied

51 Auction stages

- (1) The auction consists of a primary stage, a secondary stage (if required) and an assignment stage.
- (2) The primary stage is made up of:
 - (a) the pre-bidding phase, for bidders to change or confirm their:
 - (i) provisional start demands for the lots of each product; and
 - (ii) provisional minimum spectrum requirements (if any) for the lots of each product; and
 - (b) one or more clock rounds for the making of bids on lots of a product and the results of that clock round; and
 - (c) the determination of the final posted demands, as a result of the final clock round, for the lots of each product allocated to a primary winner and of the associated primary price, after all clock rounds are completed.
- (3) The secondary stage, if required, is made up of:
 - (a) one or more rounds for the making of bids on any residual lot of a product that is available in the secondary stage of the auction and the results of the round; and
 - (b) the determination of the winning final high bids for any residual lot of a product allocated to a secondary winner and of the associated secondary price after all rounds for the secondary stage are completed.
- (4) The assignment stage is made up of:
 - (a) one or more assignment rounds for the making of bids for the assignment of frequency ranges to lots of a product (or group of products) that were allocated in the primary stage or secondary stage; and
 - (b) the determination of the winning assignment bids (after an assignment round has ended) for the frequency ranges assigned to the lots of each product (or group of products) that were allocated to a primary winner or secondary winner and of the associated total assignment price after all assignment rounds are completed.

52 Procedures if only one bidder

- (1) If there is only one bidder in the auction, the procedures to be applied for allocating lots of a product and assigning frequency ranges are as follows:
 - (a) there will be a pre-bidding phase in which the bidder may enter start demands and minimum spectrum requirements as mentioned in paragraph 50(1)(b) and one clock round in the primary stage in which the bidder may make a bid for the lots of each product;

- (b) the assignment stage will be conducted as soon as possible after the primary stage to enable the bidder to indicate the frequency ranges the bidder wishes to have assigned.

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

- (2) The ACMA must notify the bidder as soon as reasonably practicable after the later of 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.

53 Rounds of the auction

- (1) The clock rounds for the primary stage of the auction are to be conducted in accordance with the rules in Schedule 1.
- (2) The rounds for the secondary stage of the auction, if required, are to be conducted in accordance with the rules in Schedule 2.
- (3) The assignment rounds for the assignment stage of the auction are to be conducted in accordance with the rules in Schedule 3.

54 Auction manager's discretion to accept entries and bids

- (1) The auction manager may permit a bidder to make:
 - (a) an entry in the pre-bidding phase of the primary stage; or
 - (b) a bid for a round in the auction, in the primary stage or secondary stage or assignment stage;

by a method other than the auction system if the auction manager is satisfied that the bidder is not able to make an entry or a bid using the auction system.

- (2) The auction manager may permit a bidder to make:
 - (a) an entry in the pre-bidding phase of the primary stage; or
 - (b) a bid for a round in the auction, in the primary stage or secondary stage or assignment stage;

after the end time of the pre-bidding phase or round if the auction manager is satisfied that the bidder could not make the entry during the pre-bidding phase or the bid during the round because of technical or communication problems.

- (3) An entry or a bid permitted to be made by the auction manager under subsection (2) is taken to have been made during the pre-bidding phase or relevant round.
- (4) The auction manager must not permit a bidder to make:
 - (a) an entry under paragraph 2(a) after information about the outcome of the pre-bidding phase has been provided to bidders; or
 - (b) a bid under paragraph (2)(b) after information about the outcome of the relevant round has been provided to bidders.

Note 1: See subclause 3(7) of Schedule 1 for details of the information about the outcome of the pre-bidding phase of the primary stage that will be provided to bidders.

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

55 Action that auction manager may take in exceptional circumstances

- (1) If the auction manager is satisfied that the auction is affected by exceptional circumstances, the auction manager may:
 - (a) make corrections to:
 - (i) entries made in the pre-bidding phase of the primary stage of the auction; and
 - (ii) the results of the round of the auction that last ended; and
 - (iii) information received by a bidder after that round; or
 - (b) stop the pre-bidding phase of the primary stage of the auction and restart the pre-bidding phase; or
 - (c) stop the current round of the auction and restart the round; or
 - (d) cancel the results of one or more rounds of the auction and restart the auction from the point before those rounds; or
 - (e) cancel the results of all the rounds of the auction in the primary stage or secondary stage or assignment stage and restart the auction from the first round of the relevant stage; or
 - (f) stop the auction.
- (2) For this section, exceptional circumstances include:
 - (a) a significant technical difficulty with the auction system; or
 - (b) a breach of the confidentiality obligation in section 17.
- (3) Subsection (2) does not limit what might constitute exceptional circumstances.
- (4) This section applies to the pre-bidding phase and clock rounds in the primary stage, rounds in the secondary stage and assignment rounds in the assignment stage of the auction.

Division 2 Affiliations during the auction

56 Affiliation between bidders during auction period not permitted

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

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

57 Requirement to report affiliation

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

58 Auction continues despite possible affiliation

If the ACMA becomes aware during the auction period that two or more bidders may be affiliated, the auction is to continue and the bidders may continue to participate in the auction.

59 ACMA consideration of affiliation

- (1) If the ACMA has reason to believe that two or more bidders are affiliated during the auction period, the ACMA must, in writing, notify the bidders and tell them the basis on which the ACMA believes that the affiliation exists.
- (2) If a bidder gave the ACMA information under section 57 and the ACMA does not consider that the affiliation exists, the ACMA must tell the bidder in writing that the ACMA does not consider the affiliation to exist.

Division 3 Statement by primary winners and secondary winners about affiliations**60 Primary winners and secondary winners to make statement about affiliations**

- (1) If subsection 59(1) applies before the end of the secondary stage (if there is one) or primary stage (if there is no secondary stage), then as soon as practicable after the end of the relevant stage and before the start of the assignment stage, the ACMA must:
 - (a) give each primary winner and each secondary winner details about the identity of all other primary winners and all other secondary winners; and
 - (b) ask those winners to make a statement whether the winner is an affiliate of another winner and, if so, identifying the other winner and giving details of the affiliation.
- (2) The ACMA must state a deadline, at least 10 working days after the date of the request, before which the statement must be received by the ACMA.
- (3) A primary winner or secondary winner must give the ACMA the statement by the deadline.

Note 1: Giving false or misleading information is a serious offence under section 137.1 of the *Criminal Code Act 1995*.

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

61 Notification that winners are affiliated

If the ACMA is satisfied that two or more primary winners or secondary winners are affiliated after the end of the primary stage (if there is no secondary stage) or secondary stage (if there is one), the ACMA must, in writing, notify those winners and tell them the basis on which the ACMA is satisfied the winners are affiliated.

62 Consequences of affiliation between winners

- (1) If the ACMA notifies two or more primary winners or secondary winners under section 61 that it is satisfied the winners are affiliated, the ACMA must not allocate spectrum licences to those winners that would exceed the allocation limits:
 - (a) applicable to a product, other than a lower band product and an upper band product; or
 - (b) applicable to any one of the combined products.
- (2) If the allocation of spectrum licences to the affiliated primary winners or secondary winners for all the lots of a product (when expressed in MHz) those winners were allocated in the primary stage or secondary stage would exceed the allocation limits applicable to the product (other than a lower band product and an upper band product) or applicable to any one of the combined products, the winners may give a direction in writing to the ACMA specifying how spectrum is to be allocated between the winners up to the allocation limits applicable to the product (other than a lower band product and an upper band product) or applicable to any one of the combined products.
- (3) The direction must be given jointly by the affiliated primary winners or secondary winners and must be given to the ACMA within 5 working days after the winners received notification under section 61.
- (4) If the ACMA does not receive a direction within those 5 working days, the ACMA may, for any part of the spectrum where the lots of a product allocated to the affiliated primary winners or secondary winners exceed the allocation limits applicable to the product (other than a lower band product and an upper band product) or applicable to any one of the combined products, choose at its discretion how to allocate spectrum licences to each winner up to the allocation limits applicable to the product (other than a lower band product and an upper band product) or applicable to any one of the combined products.
- (5) Spectrum in excess of the allocation limits:
 - (a) applicable to a product, other than a lower band product and an upper band product; or
 - (b) applicable to any one of the combined products;that is not allocated under subsection (2) or (4) is taken to be unallocated.
- (6) A winning bidder must pay the full balance of the winning price:
 - (a) for all lots allocated to the bidder in the primary stage or secondary stage, despite receiving a smaller allocation as a result of this section; and
 - (b) for all frequency ranges assigned to any of those lots in the assignment stage.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

Part 6—Procedures after auction

Division 1 Notices and refunds to withdrawn applicants and unsuccessful bidders

63 Notice and refunds to withdrawn applicants

- (1) As soon as practicable after the end of the auction period, the ACMA must notify each applicant that withdrew, or was taken to have withdrawn its application, that the applicant's confidentiality obligation under section 17 has ended.
- (2) If an applicant that withdrew, or was taken to have withdrawn, its application made an eligibility payment, the ACMA on behalf of the Commonwealth must refund the eligibility payment no later than 6 months after giving the notice under subsection (1) unless the ACMA has made a decision to retain the eligibility payment under section 75.

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

64 Notice and refunds to unsuccessful bidders

- (1) As soon as practicable after the end of the auction period, the ACMA must notify each bidder that is not a winning bidder that:
 - (a) the bidder was unsuccessful in the auction; and
 - (b) the bidder's confidentiality obligation under section 17 will end when the ACMA announces or publishes the information mentioned in subsection 69(1).
- (2) If the bidder made an eligibility payment, the ACMA on behalf of the Commonwealth must refund the eligibility payment no later than 6 months after giving the notice under subsection (1) unless the ACMA has made a decision to retain the eligibility payment under section 75.

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

Division 2 Winning prices, payment and issue of spectrum licences

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

65 Winning price and balance of winning price

- (1) For a winning bidder, the *winning price* is the total of:
 - (a) the primary price for all lots allocated to the bidder in the primary stage; and
 - (b) the secondary price (if any) for all lots allocated (if any) to the bidder in the secondary stage; and
 - (c) the total assignment price (if any) for all frequency ranges assigned to those lots in the assignment stage.

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

- (2) For a winning bidder, the ***balance of the winning price*** is the winning price minus any eligibility payment made by the bidder under, or for the purposes of, section 36.

66 Results of the auction

- (1) After the winning bidders and winning prices are determined, the auction manager must, by notice in writing, tell each winning bidder:
 - (a) the number of lots of each product allocated to the winning bidder;
 - (b) the frequency ranges assigned to the lots allocated to the winning bidder; and
 - (c) the winning price to be paid by the winning bidder.

Note: The allocation of spectrum licences is complete when frequency ranges are assigned to lots of a product (allocated to a bidder in the primary stage or secondary stage) at the end of the assignment stage.

- (2) After the winning bidders and winning prices are determined, the auction manager must tell all bidders in writing:
 - (a) the names of all winning bidders in the auction; and
 - (b) the frequency ranges for each product in relation to the lots allocated in the auction; and
 - (c) the winning price paid, or to be paid, by each winning bidder in the auction.
- (3) Unless all bidders agree in writing, the ACMA will not provide to all bidders any further information regarding the results of the auction other than that mentioned in subsection (2) and subclause 18(2) of Schedule 1 and subclause 18(2) of Schedule 2.

Note: For information about the auction that is announced or published after the end of the auction period, see subsection 69(1).

67 Sufficient eligibility payment – issue of spectrum licence without further payment

- (1) If the balance of the winning price for a winning bidder is an amount less than zero:
 - (a) the ACMA on behalf of the Commonwealth must refund the eligibility payment in excess of the winning price no later than 6 months after giving the notice under subsection 66(1) unless the ACMA has made a decision to retain the excess eligibility payment under section 75; and
 - (b) the bidder is entitled to be issued a spectrum licence for each part of the spectrum assigned to the lots allocated to the bidder without further payment.
- (2) If the balance of the winning price for a winning bidder is zero, the bidder is entitled to be issued a spectrum licence for each part of the spectrum assigned to the lots allocated to the bidder without further payment.
- (3) For subsections (1) and (2), a winning bidder is taken to have elected to pay the winning price in full.

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

68 Payment of balance of winning price

If the balance of the winning price for a winning bidder is an amount greater than zero, it must be paid by the winning bidder to the ACMA on behalf of the Commonwealth in accordance with Schedule 4.

69 Publication of auction results

- (1) The ACMA must announce or publish the following information about the auction after the end of the auction period:
 - (a) the names of winning bidders;
 - (b) the spectrum allocated to each winning bidder;
 - (c) the winning price paid, or to be paid, by each winning bidder.
- (2) Before the ACMA announces or publishes the information in subsection (1), the auction manager must notify each winning bidder, in writing, that:
 - (a) the ACMA will announce or publish the information; and
 - (b) the winning bidder's confidentiality obligation under section 17 will end when the ACMA announces or publishes the information.
- (3) Unless all bidders agree in writing, the ACMA will not announce or publish any further information regarding the results of the auction.

Part 7—Miscellaneous

70 Unallocated spectrum

Parts of the spectrum that are available in the auction but not allocated in the primary stage and not allocated in the secondary stage (if any), or taken to be unallocated under section 62 or 76, may be later made available for allocation by a procedure to be determined by the ACMA.

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

71 Bidders must not misuse auction system

- (1) A bidder must only access and use the auction system in accordance with the information about access and use provided under paragraphs 45(2)(c), (d) and (e).
- (2) A bidder must not attempt to interfere with, disrupt or damage the auction system.
- (3) A bidder must not use or attempt to use the auction system to breach a law of the Commonwealth.

72 ACMA may obtain information from applicants and bidders

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

Note: If a requirement in a notice given under this subsection is breached, the ACMA may take action under section 75.

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

73 Use of information and documents by ACMA

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

74 ACMA to provide information to ACCC on request

- (1) The ACCC may make a request to the ACMA for information in relation to the auction or in relation to an applicant or bidder.
- (2) The ACMA must provide the requested information to the ACCC if the ACMA has the information.
- (3) Without limiting subsection (1), information that the ACCC may request includes the following:
 - (a) completed application forms and completed eligibility nomination forms (including any updates to such forms);
 - (b) deeds of confidentiality;
 - (c) information about an applicant's associates and affiliations (including statutory declarations and statements made under this instrument);
 - (d) information about any breaches of confidentiality obligations;
 - (e) information about bidding during the auction;
 - (f) information about the outcomes of the procedures in Part 6.

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

- (1) The ACMA on behalf of the Commonwealth may retain an eligibility payment made by an applicant or bidder, or enforce a deed of financial security given by an applicant or bidder, if:
 - (a) the ACMA is satisfied that:
 - (i) the applicant or bidder, or a related person of the applicant or bidder, or a contractor of the applicant or bidder, breached a provision of this instrument; and
 - (ii) the breach affected, or may have affected, the outcome of the auction; or
 - (b) the ACMA is satisfied that the applicant or bidder, or a related person of the applicant or bidder, or a contractor of the applicant or bidder, breached the confidentiality obligation under section 17 before the confidentiality obligation came to an end; or
 - (c) the ACMA is satisfied that the bidder breached section 56; or
 - (d) the bidder is a primary winner or secondary winner who failed to give the statement, if required, under section 60; or
 - (e) the bidder is a winning bidder who failed to:
 - (i) pay the balance of the winning price in accordance with Schedule 4; or
 - (ii) comply with the requirements to pay the balance of the winning price in accordance with Schedule 4; or
 - (f) the applicant or bidder failed to comply with a requirement in a notice given under subsection 72(1).
- (2) The ACMA must, in writing, notify the applicant or bidder of a decision under subsection (1) and the nature of the breach or failure before the later of:
 - (a) 6 months after the end of the auction period; and

- (b) 6 months after the day on which the breach or failure mentioned in subsection (1) occurred.
- (3) An eligibility payment retained under this section, or an amount obtained through enforcement of a deed of financial security under this section, is forfeited to the Commonwealth unless the Federal Court orders the return of the amount under section 77.

76 Effect of retention on winning bidders

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

- (a) despite section 67 and clause 5 of Schedule 4, the ACMA must not issue a spectrum licence to the bidder; and
- (b) the spectrum assigned to the lots allocated to the bidder at auction is taken to be unallocated.

77 Application to Federal Court for return of retained amount

- (1) An applicant or bidder who has been notified by the ACMA under subsection 75(2) may, within 1 year of receiving the notice, apply to the Federal Court for return of all or part of an eligibility payment or an amount obtained through enforcement of a deed of financial security.
- (2) On application, the Federal Court may:
 - (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 of 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.
- (3) This section does not enable the Federal Court to order that a spectrum licence be issued to an applicant or bidder.
- (4) This section does not remove any existing jurisdiction of a court.

78 No liability of the ACMA, etc.

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

79 Other rights not affected

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

80 Auction manager may delegate functions and powers

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

- (a) a member within the meaning of the *Australian Communications and Media Authority Act 2005*; or

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

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

Schedule 1—Rules for the primary stage of the auction

(subsections 4(1) and 53(1))

Part 1—Application and interpretation

1 Application of Schedule

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

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

2 Interpretation

(1) In this Schedule:

active: see subclause 11(2).

activity target: see subclause 11(1).

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

- (a) for the first clock round – the total of the number of lots of the product recorded in the auction system as the start demands of all bidders under subclause 3(2); or
- (b) for any clock round other than the first clock round – the total of the posted demands for the lots of the product of all bidders.

bid, in a clock round, means:

- (a) an increase bid; or
- (b) a decrease bid; or
- (c) a maintain bid.

bid increment percentage: see subclause 4(1).

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

- (a) equal to or greater than the opening price; and
- (b) less than or equal to the clock price.

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

- (a) the opening price for the lots of the product; and
 - (b) the bid increment percentage for the lots of the product multiplied by that opening price;
- rounded up to the next hundred.

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

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

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

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

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

eligibility requirement percentage: see subclause 4(4).

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

- (a) the aggregate demand; and
- (b) the supply.

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

final clock round: see clause 16.

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

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

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

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

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

- (a) for the first clock round – the starting price for the lots of the product; or

Note: For starting prices, see paragraph 27(1)(a) or 37(1)(a).

- (b) for any clock round other than the first clock round – the posted price for the lots of the product for the previous clock round.

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

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

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

- (a) equal to or greater than the opening price for the lots of the product for the clock round; and
- (b) less than or equal to the clock price for the lots of the product for the clock round.

Note: See subclause 2A(6).

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

- (a) the difference between the bid price and the opening price; and
- (b) the difference between the clock price and the opening price.

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

primary price: see subclause 17(3).

primary winner: see subclause 17(1).

processing algorithm: see clause 2A.

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

- (a) for the first clock round – the number of lots of the product recorded in the auction system for the bidder under paragraph 3(2)(a) or 3(3)(a); or
- (b) for any clock round other than the first clock round – the posted demand of the bidder for the lots of the product for the previous clock round.

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

Note: For the definitions of *size* and *total size*, see subsection 5(2).

- (2) In this Schedule, a reference to the total value of the lots, in eligibility points, is a reference to the sum of the lot ratings for the lots.
- (3) In this Schedule, after a decrease bid is entered, a reference to the decrease bid or the number of lots for the decrease bid is a reference to the absolute value of the decrease bid or absolute value of the number of lots for the decrease bid.

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

Part 2—Processing of bids

2A Processing algorithm

- (1) In this Schedule, the **processing algorithm** is a method in the auction system, that is given effect immediately after the end time of a clock round, that performs the following steps:
 - Step 1: collects all the increase bids and decrease bids requested by bidders for lots of each product in the clock round.
 - Step 2: calculates the price point of each increase bid and each decrease bid.
 - Step 3: sorts all the increase bids and decrease bids, in ascending order, based on the price point of each bid, to form a queue of bids.
 - Step 4: sorts any bids in the queue with equal price points using a pseudorandom process.
 - Step 5a: processes the bids to determine if the first bid in the queue is to be applied in full, applied in part, or rejected.
 - Step 5b: if the bid is applied in full, deletes the bid from the queue and returns to Step 5a.

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

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

- (i) applied in full, and if so, returns to Step 5b; or
- (ii) applied in part, and if so, returns to Step 5c; or
- (iii) rejected, and if so, this Step 5d is recursive.

Step 6: stops processing bids if:

- (i) a bid is rejected and there is no next bid in the queue; or
- (ii) there is no bid remaining in the queue.

Step 7: determines:

- (i) the posted price for the lots of each product for the clock round in accordance with subclause (6); and
- (ii) the posted demand for each bidder for the lots of each product for the clock round in accordance with paragraph 2B(6)(a) or 2C(6)(a), whichever is the case.

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

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

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

- (a) not collected by the processing algorithm; and
- (b) always applied in full in accordance with clause 2D; and
- (c) taken to be at the posted price for the current clock round.

(3) For Step 5b:

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

(4) For Step 5c:

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

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

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

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

- (a) if the excess demand is greater than zero for the lots of the product, the posted price is the clock price for the clock round; or
- (b) if the excess demand is not greater than zero for the lots of the product, the posted price is either:
 - (i) if any decrease bid is applied in full or in part, the highest bid price at which a decrease bid is applied for the clock round; or
 - (ii) if no decrease bid is applied in full or in part, the opening price for the clock round.

2B Applying an increase bid

- (1) In this clause, the **available activity** (in eligibility points) of a bidder, immediately before an increase bid is to be processed, is equal to the sum of:
 - (a) the difference between:
 - (i) the eligibility points of the bidder at the start of the clock round; and
 - (ii) the sum of the lot ratings for the total of the start demands of the bidder for each product at the start of the clock round; and
 - (b) the difference between:
 - (i) the sum of the lot ratings for the decrease bids of each product that have already been applied in full or in part, before the increase bid that is to be processed; and
 - (ii) the sum of the lot ratings for the increase bids of each product that have already been applied in full or in part, before the increase bid that is to be processed.
- (2) If the available activity (in eligibility points), immediately before an increase bid is processed, is equal to or greater than the sum of the lot ratings for the increase bid that is to be processed, the increase bid is applied in full, such that the **provisional posted demand** for the lots of a product of a bidder is equal to the sum of:
 - (a) the number of lots of the product for the start demand of the bidder; and
 - (b) the number of lots for the parts of the increase bid of the product that have already been applied in part, if any, before the remainder of the increase bid is to be processed; and
 - (c) the number of lots for the increase bid of the product that is being processed.

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

- (3) If the available activity (in eligibility points), immediately before an increase bid is processed, is less than the sum of the lot ratings for the increase bid that is to be processed, the increase bid is applied in part, such that the **provisional posted demand** for the lots of a product of a bidder is equal to the sum of:
 - (a) the number of lots of the product for the start demand of the bidder; and
 - (b) the number of lots for the parts of the increase bid of the product that have already been applied in part, if any, before the remainder of the increase bid is to be processed; and
 - (c) the quotient, when expressed in number of lots, of:

- (i) the available activity (in eligibility points); and
- (ii) the lot rating for the lot of the product;

rounded down to the nearest integer.

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

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

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

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

Note 1: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

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

- (6) After all the increase bids and decrease bids in the queue are processed:
- (a) the posted demand for the lots of a product for a bidder for the current clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed; and
 - (b) Step 8 of subclause 2A(1) is to be performed.

2C Applying a decrease bid

- (1) In this clause, the **provisional excess demand** for lots of a product, immediately before a decrease bid is to be processed, is equal to the sum of:
- (a) the excess demand for the lots of the product at the start of the clock round; and
 - (b) the difference between:
 - (i) the number of lots for the increase bids of the product that have already been applied in full or in part, before the decrease bid that is to be processed; and
 - (ii) the number of lots for the decrease bids of the product that have already been applied in full or in part, before the decrease bid that is to be processed;

less:

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

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

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

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

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

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

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

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

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

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

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

- (a) less than zero; and
- (b) if the absolute value of the provisional excess demand is less than the number of lots of the product for the decrease bid that is being processed;

the decrease bid is applied in part, such that the ***provisional posted demand*** for the lots of a product of a bidder is equal to:

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

- (e) the difference between the number of lots for the decrease bid of the product that is to be processed and the absolute value of the provisional excess demand.

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

- (5) If:
 - (a) a minimum spectrum requirement has been selected for the lots of the product by the bidder; and
 - (b) the provisional posted demand calculated in accordance with subclause (4) would have been less than the minimum spectrum requirement which has been selected for the lots of that product by the bidder; the decrease bid is applied in full and the *provisional posted demand* for the lots of that product of the bidder is equal to zero.
- (6) After all the increase bids and decrease bids in the queue are processed:
 - (a) the posted demand for the lots of a product for a bidder for the current clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed; and
 - (b) Step 8 of subclause 2A(1) is to be performed.

2D Applying a maintain bid

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

Part 3—Arrangements for primary stage

3 Entries in the auction system before first clock round

- (1) Before the pre-bidding phase, the auction manager must enter in the auction system each bidder's:
 - (a) provisional start demands for the lots of each product recorded in the register for the bidder under paragraph 44(2)(f); and
 - (b) provisional minimum spectrum requirements (if any) for the lots of each product recorded in the register for the bidder under paragraph 44(2)(h); and
 - (c) allocation limits for the lots of the following:
 - (i) each product, other than the lower band products and the upper band products, as recorded in the register for the bidder under subparagraph 44(2)(i)(i);
 - (ii) each of the combined products, as recorded in the register for the bidder under subparagraph 44(2)(i)(ii).
- (2) After the auction manager has made the entries in subclause (1) and during the pre-bidding phase, a bidder may, using the auction system:
 - (a) enter the bidder's actual start demands, by changing or confirming the bidder's provisional start demands, for the lots of each product for the first clock round; and

- (b) enter the bidder's actual minimum spectrum requirements (if any), by changing or confirming the bidder's provisional minimum spectrum requirements (if any), for the lots of each product for the primary stage.

Note: A bidder may also be taken to make an entry in the circumstances specified in section 54.

- (3) If a bidder does not make an entry in the auction system under paragraph (2)(a) or (2)(b):
- (a) the bidder's actual start demands are taken to be the bidder's provisional start demands, as recorded in the register for the bidder under subparagraph 44(2)(f), for the lots of each product for the first clock round; and
- (b) the bidder's actual minimum spectrum requirements (if any) are taken to be the bidder's provisional minimum spectrum requirements (if any), as recorded in the register for the bidder under subparagraph 44(2)(h), for the lots of each product.

Start demand validity rules

- (4) For the purposes of paragraph (2)(a), a start demand of a bidder for lots of a product is valid if both of the following apply in relation to the start demand:
- (a) the total size of the lots of the product for the start demand does not exceed the bidder's allocation limits (when expressed in MHz):
- (i) applicable to the product, other than a lower band product and an upper band product; or
- (ii) applicable to any one of the combined products; and
- (b) the number of lots for the bidder's start demand of the product is not greater than the number of lots for the supply of the product.

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

- (5) In subclause (4), **supply** has the meaning given by subclause 2(1).
- (6) For the purposes of paragraph (2)(a), a bidder may only change a provisional start demand for lots of a product if, for all start demands of the bidder for lots of any products wanted by the bidder entered under paragraph (2)(a) or taken to be entered under paragraph (3)(a), the initial eligibility points of the bidder do not exceed the maximum eligibility points of the bidder.
- (7) After the end time of the pre-bidding phase, the auction manager must provide the following information to each bidder, using the auction system:
- (a) the bidder's actual start demands for the lots of each product for the first clock round;
- (b) the bidder's minimum spectrum requirements (if any) for the lots of each product for the primary stage;

(c) the bidder's initial eligibility points.

- (8) In this clause, ***initial eligibility points*** has the meaning given by subparagraph 12(1)(a).

4 Setting bid increment percentage and eligibility requirement percentage

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

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

- (2) Before the first clock round, the auction manager must notify the bid increment percentage for the lots of each product to each bidder.
- (3) The bid increment percentage may be different for different products and may be different for the same product between different clock rounds.
- (4) Before the first clock round, the auction manager must set a percentage (the ***eligibility requirement percentage***) to be applied in calculating the activity target during each clock round.

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

- (5) Before the first clock round, the auction manager must notify the eligibility requirement percentage to each bidder.
- (6) The eligibility requirement percentage may be different for different clock rounds.

5 Schedule for clock rounds of the primary stage

- (1) Clock rounds must start and end between 9.00 am and 5.00 pm on working days, other than a recess day.
- (2) The scheduling of clock rounds between those times is at the auction manager's discretion.
- (3) There is no minimum or maximum length for a clock round, and no minimum or maximum length for the interval between clock rounds.
- (4) There is no upper or lower limit on the number of clock rounds per day.
- (5) Subject to section 50, the auction manager (using the auction system) will indicate to each bidder for the first clock round of a given day the anticipated schedule of clock rounds for that day at least 1 hour before the start time of the first clock round of the day. However, the auction manager may, at any time, modify the schedule of clock rounds. If this occurs, the auction manager must tell each bidder in writing of the change as soon as practicable.

6 Recess days

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

- (2) Before declaring a recess day, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received.
- (3) If the auction manager decides to declare a day to be a recess day the auction manager must tell each bidder in writing of the recess.

7 Clock rounds of the primary stage

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

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

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

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

8 Information available for clock rounds of the primary stage

- (1) Before the start time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:
 - (a) the start time of the clock round;
 - (b) the end time of the clock round;
 - (c) for the lots of each product available for bidding:
 - (i) the opening price that will apply to the lots of the product in the clock round; and
 - (ii) the clock price that will apply to the lots of the product in the clock round;
 - (d) the excess demand for the lots of each product, which is determined:
 - (i) for the first clock round – based on paragraph (a) of the definition of **aggregate demand** in subclause 2(1); or
 - (ii) for any clock round other than the first clock round – based on paragraph (b) of the definition of **aggregate demand** in subclause 2(1) in the previous clock round;

Note: For the definition of **excess demand**, see subclause 2(1).

- (e) the eligibility points of the bidder for the clock round;
 - (f) the bid increment percentage for the clock round;
 - (g) the eligibility requirement percentage for the clock round;
 - (h) any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.
- (2) After the end time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:
 - (a) the posted prices for the lots of each product in the clock round;

- (b) the posted demands of the bidder for the lots of each product in the clock round;
- (c) any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

9 Changing bid increment percentage

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

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

- (2) Before doing this, the auction manager must:
 - (a) tell each bidder in writing of the proposed change; and
 - (b) ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments on the proposal that are received within that time.
- (3) The auction manager must notify each bidder for the clock round when the change takes effect before that clock round.

Note: The clock price for lots of a product could only be reduced if the primary stage of the auction is restarted either from the first clock round of the primary stage or from a previous clock round under section 55.

10 Changing eligibility requirement percentage

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

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

- (2) Before doing this, the auction manager must:
 - (a) tell each bidder in writing of the proposed change; and
 - (b) ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments on the proposal that are received within that time.
- (3) The auction manager must notify each bidder for the clock round when the change takes effect before that clock round.

Part 4—Bidding in the primary stage

11 Definitions

- (1) In this Part:

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

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

12 Eligibility points bidding cap

- (1) In a clock round, a bidder's eligibility points will be:
- for the first clock round – the **initial eligibility points**, calculated as the total value of the lots of each product (in eligibility points) for the start demands of the bidder as recorded in the auction system under paragraph 3(2)(a) or 3(3)(a); or
 - for any clock round other than the first clock round – 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).

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

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

- the total value of the lots of each product, in eligibility points, for the start demands of the bidder; and
 - the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;
- less:
- the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;

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

13 Loss of eligibility points

- (1) A bidder's eligibility points for a clock round (the **next clock round**) will be adjusted to an amount calculated in accordance with subclause (2) if the bidder does not meet its activity target in a clock round (the **current clock round**).
- (2) The amount of a bidder's eligibility points under subclause (1) for the next clock round is to be calculated as follows:

$$E = \frac{R}{P}$$

(rounded up to the nearest integer);

where:

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

R is the higher of:

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

- (i) the total value of the lots of each product, in eligibility points, for the start demands of the bidder; and
 - (ii) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;
- less:
- (iii) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;
- in the current clock round.

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

Example

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

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

- (3) A bidder who loses eligibility points in a clock round is only entitled to bid in future clock rounds in such a way that the sum, in eligibility points, of:
 - (a) the total value of the lots of each product, in eligibility points, for the start demands of the bidder; and
 - (b) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;

less:

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

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

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

14 Clock round bids

- (1) A bidder is entitled to bid in a clock round if the bidder has eligibility points remaining for the clock round.
- (2) A bidder may not make more than one bid for the lots of each product in each clock round.
- (3) Except where subsection 54(1) or 54(2) applies, a bidder's bid is taken to have been made in a clock round when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 54(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 54(2) allows the auction manager to permit a bid to be made after a clock round has ended, in certain circumstances.

- (4) A bidder may change, delete or replace a bid in the auction system during a clock round as often as desired, subject to the data validation checks that are

performed by the auction system. The bid for the lots of a product that will be treated as binding for a bidder is the bid in the auction system at the end time of the clock round.

Note: A bidder may also be taken to make a bid in the circumstances specified in section 54.

15 Validity of bids

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

(a) except where subsection 54(2) applies, the bid is received by the auction system between the start time and end time of the clock round;

Note: Subsection 54(2) allows the auction manager to permit a bid to be made after a clock round has ended, in certain circumstances.

(b) for an increase bid or a decrease bid – the bid price is not less than the opening price and not greater than the clock price for the lots of a product for the clock round;

(c) for an increase bid or a decrease bid – the bid price is a multiple of one hundred;

(d) for an increase bid for lots of a product – the sum (when expressed in MHz) of:

(i) the total size of the lots of the product for the start demand of the bidder; and

(ii) the total size of the lots of the product for the increase bid of the bidder;

in the clock round does not exceed the bidder's allocation limits (when expressed in MHz) applicable to the product (other than a lower band product and an upper band product) or applicable to any one of the combined products;

Note: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

(e) for an increase bid for lots of a product – the sum of:

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

(ii) the number of lots for the bidder's increase bid for the product; in the clock round is not greater than the number of lots for the supply of the product;

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

- (g) for a decrease bid for lots of a product – the difference between:
 - (i) the number of lots for the bidder’s start demand for the product; and
 - (ii) the number of lots for the bidder’s decrease bid for the product; in the clock round is not less than zero;
 - (h) for a decrease bid for lots of a product – for a bidder that selected a minimum spectrum requirement, the difference between:
 - (i) the number of lots of the bidder’s start demand for the product; and
 - (ii) the number of lots for the bidder’s decrease bid for the product; in the clock round is either zero or at least the minimum spectrum requirement for the lots of the product;
 - (i) for an increase bid or a decrease bid – the sum, in eligibility points, of:
 - (i) the total value of the lots of each product, in eligibility points, for all the start demands of the bidder; and
 - (ii) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;less:
 - (iii) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;in the clock round is not greater than the eligibility points of the bidder for the clock round.
- (2) If a bidder does not make a bid, or does not make a valid bid, for lots of a product in a clock round, the bidder is taken to have requested a decrease bid for the number of lots equal to the bidder’s start demand for the lots of the product in that clock round, at the opening price for the lots of the product for that clock round.

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

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

Part 5—Determining the primary winners and primary prices

16 End of clock rounds

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

17 Determination of primary winners and primary prices

- (1) A bidder who has posted demands for a lot or lots of a product (the *allocated lot*) as a result of the final clock round in the primary stage is a *primary winner* in the primary stage for the lot or lots of the product.
- (2) The *total posted price*, for a primary winner, for an allocated lot or lots of a product in the primary stage is an amount equal to the posted price for a lot of the product for the final clock round multiplied by the number of lots comprising the posted demand of the primary winner for that product.
- (3) The *primary price* to be paid by a primary winner for all the allocated lots of each product of the primary winner is the sum of all the primary winner's total posted prices.
- (4) The primary price calculated in accordance with subclause (3) must be rounded to the nearest hundred.

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

Part 6—Bringing the primary stage to an end**18 Results of the primary stage**

- (1) After the primary winners and primary prices are determined, the auction manager must tell each primary winner, in writing:
 - (a) the total number of lots of each product allocated to the primary winner; and
 - (b) the total posted price for the allocated lots of each product and the primary price to be paid by the primary winner for all allocated lots.
- (2) After the primary winners and primary prices are determined, the auction manager must tell all bidders, in writing:
 - (a) the total number of primary winners; and
 - (b) the total number of lots of each product that have been allocated to primary winners.

19 End of the primary stage

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

Schedule 2—Rules for the secondary stage of the auction

(subsections 4(1) and 53(2))

Part 1—Application and interpretation

1 Application of Schedule

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

Note 1: If all lots of each product were allocated in the primary stage, there is no secondary stage.

Note 2: If, for each residual lot of a product available in the secondary stage, no bidder meets the minimum spectrum requirement test or no bidder can make a bid that is valid under paragraph 12(d) or 12(e), there is no secondary stage.

- (2) If, for a product, after the final clock round of the primary stage, the excess demand for the lots of the product is equal to -1, the number of residual lots of the product available in the secondary stage of the auction is 1.
- (3) If, for a product, after the final clock round of the primary stage, the excess demand for the lots of the product is not equal to -1, there are no residual lots of the product available in the secondary stage of the auction.
- (4) In this clause, *excess demand* has the meaning given by subclause 2(1) of Schedule 1.

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

- (1) For each lower band product, if:
- (a) this Schedule applies to both one lot for the lower band product and one lot for its related upper band product (the *two related lots*); and
 - (b) there is at least one bidder (the *affected bidder*) for which:
 - (i) the sum (when expressed in MHz) of the size of the two related lots and the size of the lots of the relevant combined products allocated to the bidder in the primary stage would exceed the bidder's allocation limits applicable to those combined products; and
 - (ii) the sum (when expressed in MHz) of the size of one of those two related lots and the size of the lots of the relevant combined products allocated to the bidder in the primary stage would not exceed the bidder's allocation limits applicable to those combined products;

then, before the first round of the secondary stage:

- (c) the auction manager must, in writing, notify all affected bidders that one lot for the lower band product and one lot for the related upper band product are available for bidding in the secondary stage; and

- (d) the auction manager must nominate a time and date, which is before the first round of the secondary stage, before which an affected bidder may make a nomination under subclause (2) (the ***nomination deadline***).
- (2) Before the nomination deadline, a bidder may nominate in writing either (but not both):
- (a) to bid on the lot for the lower band product; or
- (b) to bid on the lot for the related upper band product.
- (3) If a bidder nominates in accordance with subclause (2) to bid on the lot for the lower band product, the bidder must not make a bid during the secondary stage on the lot for the related upper band product.
- (4) If a bidder nominates in accordance with subclause (2) to bid on the lot for the related upper band product, the bidder must not make a bid during the secondary stage on the lot for the lower band product.
- (5) If a bidder does not nominate in accordance with subclause (2), the bidder must not make a bid on either of the two related lots.

Note 1: Paragraph 12(e) makes any bid on a single lot of a lower band product or an upper band product that are related products invalid if it would exceed the bidder's allocation limits applicable to the combined products to which the related products belong.

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

2 Interpretation

- (1) In this Schedule:

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

bid increment percentage: see subclause 3(7).

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

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

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

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

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

final high bid: see subclause 14(3).

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

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

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

lot, unless the contrary intention appears, means a residual lot of a product determined in accordance with subclause 1(2).

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

recess day: see subclause 6(1).

residual price: see subclause 17(2).

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

secondary price: see subclause 17(3).

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

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

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

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

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

- (1) There must be at least 24 hours between the final clock round of the primary stage and the first round of the secondary stage.
- (2) Rounds of the secondary stage must start and end between 9.00 am and 5.00 pm on working days, other than a recess day.

- (3) The scheduling of rounds between those times is at the auction manager's discretion.
- (4) There is no minimum or maximum length for a round, and no minimum or maximum length for the interval between rounds.
- (5) There is no upper or lower limit on the number of rounds per day.
- (6) The auction system will indicate to each bidder for the first round of a given day the anticipated schedule of rounds for that day at least 1 hour before the start time of the first round of the day. However, the auction manager may, at any time, modify the schedule of rounds. If this occurs, the auction manager must tell each bidder of the change as soon as practicable.
- (7) Before the first round of the secondary stage, the auction manager must set a percentage (the ***bid increment percentage***) for each lot as a percentage of the starting price for the lot for the first round of the secondary stage, and of the specified price for the lot in any other round of the secondary stage.

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

- (8) Before the first round of the secondary stage, the auction manager must notify the bid increment percentage for each lot to each bidder for the first round of the secondary stage.
- (9) The bid increment percentage may be different for different lots and may be different for the same lot between different rounds of the secondary stage.

4 Rounds of the secondary stage

- (1) Each lot is available for bidding in the first round of the secondary stage, and in each subsequent round of the secondary stage until the final round for bids on that lot.
- (2) During a round of the secondary stage, and subject to this Schedule, each bidder for the round may make a bid on each lot that:
 - (a) is available for bidding during that round; and
 - (b) meets the minimum spectrum requirement test for the bidder.
- (3) However, a bidder cannot bid on a lot of a product if allocation of that lot to the bidder would exceed the bidder's allocation limits:
 - (a) applicable to the product, other than a lower band product and an upper band product; or
 - (b) applicable to any one of the combined products.

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

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

5 Information available during rounds of the secondary stage

- (1) Before the start time of each round of the secondary stage, the auction manager must provide the following information for that round to each bidder, using the auction system:
 - (a) the start time of the round;
 - (b) the end time of the round;
 - (c) for each lot available for bidding in that round that meets the minimum spectrum requirement test for the bidder and on which the bidder may make a bid:
 - (i) the specified price that will apply to the lot in the round; and
 - (ii) for the first round of the secondary stage – the starting price for the lot; and
 - (iii) for each round other than the first round of the secondary stage – the specified price that applied to that lot in the previous round of the secondary stage; and
 - (iv) the total number of bidders for whom:
 - (A) the lot meets the minimum spectrum requirement test; and
 - (B) allocation of the lot as a unit of a product would not exceed the bidder's allocation limits applicable to the product (other than a lower band product and an upper band product) or applicable to any one of the combined products;
 - (d) any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

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

Note 2: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

- (2) After each round of the secondary stage, the auction manager must provide the following information for that round to each bidder, using the auction system:
 - (a) the bids made (if any) by the bidder during the round;

- (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 in that round that meets the minimum spectrum requirement test for the bidder and on which the bidder may make a bid – the number of bidders remaining in the secondary stage of the auction for that lot after the end time of the round;
 - (d) any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.
- (3) Subclauses (1) and (2) do not prevent the auction manager or the ACMA from providing the information specified in those subclauses to other bidders at any time during the secondary stage.

6 Recess days

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

Part 3—Bidding in the secondary stage

7 When bidder cannot make a bid on a lot

If, in a round of the secondary stage:

- (a) a bidder does not make a bid on a lot; or
- (b) a bidder is an exit bidder in the circumstances set out in clause 13 in relation to a lot;

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

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

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

8 Starting price and specified price

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

Note: For starting prices, see paragraphs 27(1)(a) and 37(1)(a) of this instrument. For the validity of bids, see clause 12.

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

- (b) the bid increment percentage for the lot multiplied by that starting price;
rounded up to the next hundred.
- (3) The **specified price** for a lot in a round of the secondary stage, other than the first round of the secondary stage, is the sum of:
 - (a) the specified price for the lot in the previous round of the secondary stage; and
 - (b) the bid increment percentage for the lot multiplied by that specified price;
rounded up to the next hundred.
- (4) If a round in the secondary stage is the final round for bids on a lot, there is no later round of the secondary stage and, for the purposes of subclause (3), no **specified price** for the lot.

9 Changing bid increment percentage

- (1) The auction manager may, at any time during the secondary stage, change the bid increment percentage for a lot to be applied in calculating the specified price for a lot in a round of the secondary stage.
Note: For the bid increment percentage, see subclause 3(7).
- (2) Before doing this, the auction manager must:
 - (a) tell each bidder of the proposed change; and
 - (b) ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments on the proposal that are received within that time.
- (3) The auction manager must notify each bidder for the round when the change takes effect before that round.

10 General rules about bidding

- (1) A bidder:
 - (a) may only make a bid on a lot if the lot meets the minimum spectrum requirement test for the bidder; and
 - (b) may only make a bid that is valid in accordance with clause 12; and
 - (c) must not make a bid on a lot if clause 7 or 13 provides that the bidder cannot make a bid on the lot.
- (2) Except where subsection 54(1) or 54(2) applies, a bidder's bid is taken to have been made in a round of the secondary stage when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 54(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 54(2) allows the auction manager to permit a bid to be made after a round of the secondary stage has ended, in certain circumstances.

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

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

11 Continue bid made at or greater than specified price

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

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

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

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

- (a) for round $N+1$, the specified price is \$110,000, and the bid is taken to be a continue bid for round $N+1$;
 - (b) for round $N+2$, the specified price is \$121,000, and the bid is taken to be a continue bid for round $N+2$;
 - (c) for round $N+3$, the specified price is \$133,100, and the bid is taken to be an exit bid for round $N+3$.
- (2) Subclause (1) is subject to any other bid made by a bidder on the lot in a round after the relevant round.

12 Validity of bids

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

- (a) either:
 - (i) if the round is the first round of the secondary stage for bids on a lot – the bid is not less than the starting price for the lot; or
 - (ii) if the round is for bids on a lot, other than the first round of the secondary stage – the bid is not less than the specified price of the lot in the previous round of the secondary stage;
- (b) subject to subsection 54(2), the bid is received by the auction system between the start time and end time of the round;
- (c) the bid is a multiple of one hundred;

- (d) for each product, other than a lower band product and an upper band product, the sum (when expressed in MHz) of:
- (i) the size of the lot of the product bid for in the round of the secondary stage; and
 - (ii) the total size of the lots of the product allocated to the bidder in the primary stage;
- does not exceed the bidder's allocation limits (when expressed in MHz) applicable to the product;
- (e) without limiting paragraph (f), for each of the combined products, the sum (when expressed in MHz) of:
- (i) the size of the lot of a lower band product or an upper band product bid for in the round of the secondary stage; and
 - (ii) for a lot that is a unit of a lower band product – the size of the lot of the related upper band product already allocated to the bidder in the secondary stage; and
 - (iii) for a lot that is a unit of an upper band product – the size of the lot of the related lower band product already allocated to the bidder in the secondary stage; and
 - (iv) the total size of the lots of the lower band product and the related upper band product allocated to the bidder in the primary stage;
- does not exceed the bidder's allocation limits (when expressed in MHz) applicable to those combined products;
- (f) the bid is not prohibited by subclause 1A(3) or 1A(4) or 1A(5).

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

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

Note 3: The spectrum licence limits direction sets limits on the allocation of spectrum licences to a single person, or a specified group of persons, in designated areas. However, in the marketing plan, the lots in the Greater Perth, Hobart and Margaret River areas are each divided into two different products, such that each area has a lower band product and an upper band product. For the purposes of the allocation limits, the two products of each area are treated as just one product. For all other purposes, they are to be treated as two products.

13 Exit bids – exclusion from further participation

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

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

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

Note 1: For a round of the secondary stage where the only bids on a lot are exit bids, or only one continue bid is made in addition to any exit bids, see Part 4 of this Schedule.

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

Part 4—Determining the secondary winners and secondary prices**14 Final round for bids on a lot, final round of the secondary stage, and final high bid**

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

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

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

- (2) If, in relation to a round of the secondary stage, both of the following apply:
- the round was a round for bids on one or more lots; and
 - after the round, the final round for bids on a lot has occurred for each lot;
- the round is the *final round of the secondary stage*.

- (3) For a lot other than a lot for which no bids were made in the first round of the secondary stage, the *final high bid* is:
- if one bid was made on the lot in the final round for bids on the lot – that bid;
 - if one continue bid was made on the lot in the final round for bids on the lot – that continue bid;
 - if all of the following apply:
 - no continue bid was made on the lot in the final round for bids on the lot;
 - two or more exit bids were made on the lot in the final round for bids on the lot;
 - one of those exit bids (the *high exit bid*) was greater than each of the other exit bids;
- the high exit bid;
- (d) in any other case – selected in accordance with clause 15.

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

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

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

15 Tiebreaker for a lot

- (1) This clause applies in relation to a lot if:
- no continue bid was made on the lot in the final round for bids on the lot; and

- (b) two or more exit bids were made on the lot in the final round for bids on the lot; and
 - (c) of those exit bids:
 - (i) two or more of those exit bids were equal (the *tied exit bids*); and
 - (ii) the tied exit bids were greater than each other exit bid mentioned in paragraph (b).
- (2) Where this clause applies, the *secondary winner* for the lot will be selected from the bidders who made the tied exit bids using a pseudorandom process. The pseudorandom process must be conducted before the next round of the secondary stage (if any).
- (3) For the purposes of paragraph 14(3)(d), the *final high bid* on the lot is the amount of the last bid made by the secondary winner.

Part 5—Bringing the secondary stage to an end

16 End of rounds of the secondary stage

- (1) The rounds of the secondary stage will end immediately after:
- (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 process mentioned in subclause 15(2) occurs;
 - (b) in any other case – the final round of the secondary stage.
- (2) After the rounds of the secondary stage end, the auction manager must tell each bidder, using the auction system, that the rounds of the secondary stage have ended and that the auction will progress to the assignment stage.

17 Determination of secondary winners and secondary prices

- (1) Subject to subclause 15(2), a bidder who has the final high bid for a lot (the *allocated lot*), in accordance with subclause 14(4), as a result of the final round for bids on a lot in the secondary stage is a secondary winner in the secondary stage for the lot of the product.
- (2) For the purposes of subclause (3), the *residual price* for an allocated lot of a product in the secondary stage is an amount equal to:
- (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.
- (3) The *secondary price* to be paid by a secondary winner for all the allocated lots of each product of the secondary winner is the sum of all the secondary winner's residual prices.

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

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

18 Results of the secondary stage

- (1) After the secondary winners and secondary prices are determined, the auction manager must tell each secondary winner, using the auction system:
- (a) the lots of each product allocated to the secondary winner; and
 - (b) the residual price for the allocated lot of each product and the secondary price to be paid by the secondary winner for all allocated lots.
- (2) After the secondary winners and secondary prices are determined, the auction manager must tell all bidders (in the primary stage and secondary stage):
- (a) the total number of secondary winners who have been allocated a lot of a product; and
 - (b) for each lot allocated to a secondary winner, the product to which the lot belongs.

19 End of the secondary stage

- (1) The auction manager must tell each primary winner and each secondary winner, the sum of:
- (a) the primary price; and
 - (b) the secondary price;
- for all the allocated lots, in the primary stage or secondary stage, of each product of that winner.
- (2) Immediately after the auction manager provides the results in accordance with subclauses 18(1) and 18(2), the auction manager must tell each bidder that the secondary stage is completed.

Schedule 3—Rules for the assignment stage of the auction

(subsections 4(1) and 53(3))

Part 1—Application and interpretation

1 Application of Schedule

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

Note: There is only a secondary stage if there is at least 1 product for which there was only 1 unallocated lot after the primary stage and there is at least 1 bidder who can make a bid on that lot.

2 Interpretation

In this Schedule:

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

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

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

assignment winner: see subclause 8(7).

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

results: see clause 9.

total assignment price: see subclause 8(8).

Note: For the definitions of *size* and *total size*, see subsection 5(2).

Part 2—Arrangements for assignment stage

3 Schedule for assignment rounds of the assignment stage

- (1) After the completion of the primary stage and secondary stage (if any), the auction manager must announce:
 - (a) the anticipated start time and end time of each assignment round; and
 - (b) the product or products that will be the subject of each assignment round.
- (2) There must be at least 24 hours between the completion of the primary stage and secondary stage (if any) and the start of the first assignment round.
- (3) Assignment rounds must start and end between 9.00 am and 5.00 pm on working days.
- (4) The scheduling of assignment rounds between those times is at the auction manager's discretion.
- (5) The auction manager (using the auction system) will indicate to all bidders, before the first assignment round of a given day, the anticipated schedule of assignment rounds for that day at least 1 hour before the start time of the first assignment round of the day. However, the auction manager may, at

any time, modify the schedule of assignment rounds. If this occurs, the auction manager must tell all bidders in writing of the change as soon as practicable.

- (6) The auction manager has discretion over the duration of assignment rounds.
- (7) The auction manager has discretion over the order of the products that are to become the subject of an assignment round.
- (8) Two or more products may be the subject of a given assignment round. A product must not be the subject of more than one assignment round.

Part 3—Bidding in the assignment stage

4 Frequency range options in assignment rounds

- (1) Bidding in an assignment round is only open to bidders who were allocated, in the primary stage or secondary stage, at least one lot of a product that is the subject of the assignment round.
- (2) Subject to subclauses (3) and (4), for each product, the auction manager must determine a list of frequency range options available to each bidder so that:
 - (a) the frequency range included within each option for a bidder is a contiguous frequency range corresponding in bandwidth to the total size of the lots of the product that the bidder was allocated in the primary stage or secondary stage; and
 - (b) for each option in the list of frequency range options, there exists at least one frequency range option for every other bidder so that:
 - (i) each bidder's frequency range complies with paragraph (a); and
 - (ii) none of the frequency ranges overlap.
- (3) If some lots of a product were not allocated in the primary stage or secondary stage (if any), the auction manager must, in determining the frequency range options available to each bidder, ensure that the frequency range assigned to:
 - (a) the unallocated lots of the product, other than the lower band products, will be a contiguous frequency range corresponding in bandwidth to the total size of those unallocated lots and adjacent to the frequency 27.5 GHz;
 - (b) the unallocated lots of any one of the lower band products will be a contiguous frequency range corresponding in bandwidth to the total size of the unallocated lots of that product.
- (4) For each upper band product, if, in the primary stage or secondary stage:
 - (a) one or more lots of the upper band product (the **upper band lots**); and
 - (b) one or more lots of the related lower band product (the **lower band lots**);were allocated to a bidder, the auction manager must, in determining the frequency range options available to each bidder:
 - (c) if only one bidder was allocated lower band lots and upper band lots, ensure that the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;

- (d) if two or more bidders were allocated lower band lots and upper band lots, ensure that, for the bidder who was allocated the most lower band lots and upper band lots, the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;
- (e) if two or more bidders were allocated lower band lots and upper band lots and the total number of those lots is the same for each bidder, but the number of upper band lots is not the same, ensure that, for the bidder who was allocated the most upper band lots, the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;
- (f) if two or more bidders were allocated lower band lots and upper band lots and were allocated the same number of lower band lots and the same number of upper band lots, ensure that the lower band lots and the upper band lots each become the subject of an assignment round, however, the frequency ranges to be assigned for the lower band lots and the upper band lots need not be adjacent to each other.

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

- (5) If a bidder is participating in a given assignment round for more than one product, the auction manager may determine frequency range options available to the bidder that deal with the products as a group, providing the requirements of subclause (2) (subject to subclauses (3) and (4)) are met for each individual product in the group.
- (6) At least 24 hours before the start of the first assignment round, the auction manager must provide each bidder participating in the assignment stage with the list of frequency range options available to the bidder in each of the assignment rounds for the lots of a product that were allocated to the bidder in the primary stage or secondary stage.

5 Assignment bids

- (1) An **assignment bid** consists of:
 - (a) the frequency range option that is being bid for; and
 - (b) a bid price for the frequency range option that is a multiple of one hundred.
- (2) A bidder may submit a single assignment bid for any option in the list of frequency range options provided by the auction manager. A bidder is not permitted to bid for any other frequency range.
- (3) Except where subsection 54(1) or 54(2) applies, a bidder's assignment bid is taken to have been made in an assignment round when the assignment bid has passed data validation checks that are performed by the auction system.

Note: Subsection 54(1) allows the auction manager to permit an assignment bid to be made other than by using the auction system, in certain circumstances. Subsection 54(2) allows the auction manager to permit an assignment bid to be made after an assignment round has ended, in certain circumstances.

- (4) A bidder may change, delete or replace an assignment bid in the auction system during an assignment round as often as desired, subject to the data validation checks that are performed by the auction system. The assignment bid that will be treated as binding for a bidder is the assignment bid in the auction system at the end time of the assignment round.
- (5) Any frequency range option for which no assignment bid is received, or for which an invalid assignment bid is received, is taken to have an assignment bid with a bid price of zero dollars.
- (6) If a bidder does not submit any assignment bid, the bidder will be taken to have bid zero dollars for every frequency range option.

6 Validity of assignment bids

An assignment bid is valid if:

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

Note: Subsection 54(2) allows the auction manager to permit an assignment bid to be made after an assignment round has ended, in certain circumstances.

Part 4—Determining winning assignment bids and assignment prices

7 Determination of winning assignment bids

- (1) After an assignment round has ended, the auction manager must determine the winning assignment bids for each product or group of products bid for in the assignment round and tell each winning assignment round bidder its winning assignment bid.
- (2) The winning assignment bids must be a combination of valid assignment bids such that:
 - (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);
 - (d) if relevant, subclause 4(4) is applied.
- (3) Subject to the constraints in subclause (2), the assignment bids selected must maximise the sum of the assignment bid prices.
- (4) If more than one combination of assignment bids meets the criterion in subclause (3), the winning combination must be selected by a pseudorandom process.

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

8 Determination of assignment prices

- (1) The auction manager must determine the assignment price for each winning assignment bid in an assignment round and tell each winning assignment round bidder its winning assignment price for the frequency range.
- (2) If there is only one bidder in an assignment round, then the assignment price must be zero. Otherwise, the auction manager must determine the assignment price in accordance with the following subclauses.
- (3) The assignment price must be no more than the assignment bid price.
- (4) The assignment price may be zero.
- (5) Subject to the constraint in subclause (3), a set of assignment prices in the assignment round must be selected so that:
 - (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 in subclause (6).
- (6) For paragraph (5)(c), the formula is:

$$\min_{\{p_j\}_{j \in J}} \left\{ \sum_{j \in J} \frac{1}{w_j} (p_j - v_j)^2 \right\}$$

subject to $\{p_j\}_{j \in J}$ satisfying paragraphs (5)(a) and (5)(b),

where:

$\{p_j\}_{j \in J}$ is a set of assignment prices.

$j \in J$ is the index of each bidder (j) in the set of all bidders participating in the assignment round (J).

$\{w_j\}_{j \in J}$ is the set of prices the bidders' assigned lots would have had at the starting prices for the lots.

$\{v_j\}_{j \in J}$ is the set of Vickrey prices for the bidders, the price for each bidder j being:

- (a) the sum of bid prices for the combination of assignment bids that would have been selected under subclause 7(3) if bidder j had submitted assignment bids of zero dollars for every frequency range option; less

- (b) the sum of bid prices for all other winning assignment bids in the assignment round.

Note: For starting prices, see paragraph 27(1)(a) or 37(1)(a).

- (7) A bidder who has assignment prices for winning assignment bids in an assignment round is an **assignment winner** in the assignment stage for an assignment of a frequency range or frequency ranges to lots of a product or group of products.
- (8) For the purposes of subclause (9), the **total assignment price** for assignment of a frequency range or frequency ranges to lots of a product or group of products in the assignment stage is an amount equal to the sum of the assignment prices for the assignment of all frequency ranges of the assignment winner.
- (9) The total assignment price is to be paid by the assignment winner.
- (10) The assignment prices calculated under subclause (5) must be rounded to the nearest hundred.

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

Part 5—Bringing the assignment stage to an end

9 Results of the assignment stage

After the end of all assignment rounds, the auction manager must tell each winning assignment round bidder in writing:

- (a) the frequency ranges assigned to the lots of each product that were allocated to the bidder in the primary stage or secondary stage; and
- (b) any assignment price for the frequency ranges assigned.

10 End of the assignment stage

The assignment stage is complete when the auction manager has, under clause 9, notified all those bidders of the results of every assignment round.

Schedule 4 — Payment of balance of the winning price greater than zero and issue of spectrum licence

(subparagraphs 9(3)(b)(i) and 9(3)(c)(i), section 68, subparagraphs 75(1)(e)(i) and 75(1)(e)(ii) and paragraph 76(a))

Part 1—Application and interpretation

1 Application of Schedule

This Schedule applies to the payment of the balance of the winning price by a winning bidder that is greater than zero.

Note 1: The Minister has given a direction to the ACMA, under subsection 294(2) of the Act, to permit payment of a spectrum access charge in instalments, subject to the terms set out in the direction and so long as the precondition set out in the direction is met. See the spectrum access charges direction, available on the Federal Register of Legislation which may be accessed free of charge at www.legislation.gov.au.

Note 2: Paragraph 294(1)(b) of the Act provides that the ACMA may, by written instrument, make determinations specifying the times when spectrum access charges are payable.

Note 3: This Schedule is made under section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

Note 4: For information on how an amount must be paid, see section 9.

2 Interpretation

In this Schedule, a reference to a **winning bidder** is a reference to a winning bidder that has a balance of the winning price that is greater than zero.

Note 1: For the definition of **winning price**, see subsection 65(1).

Note 2: For the definition of **balance of the winning price**, see subsection 65(2).

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

3 Payment of balance of the winning price

- (1) If the balance of the winning price for a winning bidder is an amount greater than zero, the ACMA must notify the bidder, in writing, of the following:
 - (a) the winning price;
 - (b) the effect on the winning price of any eligibility payments made under subsection 28(2) or 34(6) or 41(2) in accordance with section 36, or of an additional eligibility payment made under subsection 39(3) for the purposes of section 36;
 - (c) that the balance of the winning price may be paid in full;
 - (d) the date on which the balance of the winning price must be paid to the ACMA on behalf of the Commonwealth;
 - (e) that the winning price may be paid in 5 instalments in accordance with clause 4;
 - (f) the amount for each of the 5 instalments;

- (g) the effect on an instalment amount of any eligibility payments made under subsection 28(2) or 34(6) or 41(2) in accordance with section 36, or of an additional eligibility payment made under subsection 39(3) for the purposes of section 36;
 - (h) the dates on which the 5 instalments must be paid to the ACMA on behalf of the Commonwealth;
 - (i) the date, not earlier than 10 working days after the date of the notice, by which the winning bidder must give the ACMA written notice whether it elects to pay the winning price:
 - (i) in full; or
 - (ii) in instalments.
- (2) If, by the date mentioned in paragraph (1)(i), a winning bidder gives the ACMA written notice that the bidder elects to pay the winning price in full, the ACMA must notify the bidder:
- (a) that the ACMA has received the winning bidder's election; and
 - (b) the date by which the balance of the winning price must be paid by the winning bidder to the ACMA on behalf of the Commonwealth.
- (3) If, by the date mentioned in paragraph (1)(i), a winning bidder gives the ACMA written notice that the bidder elects to pay the winning price in instalments, the ACMA must notify the bidder that:
- (a) the ACMA has received the winning bidder's election; and
 - (b) the instalment amounts must be paid by the winning bidder to the ACMA on behalf of the Commonwealth in accordance with clause 4; and
 - (c) a bank guarantee must be given to the ACMA on behalf of the Commonwealth, at the time and on the terms set out in the marketing plan, as a precondition to reaching an agreement with the ACMA for the payment of the winning price in instalments in accordance with clause 4.

Note: Under subsection 62(2) of the Act, the ACMA is not required to issue a spectrum licence unless the person to whom it is allocated either pays the spectrum access charge for issuing the licence, or reaches an agreement with the ACMA for the payment of that charge.

- (4) If the ACMA becomes aware that a notice under subclause (1) contains a material error, the ACMA must give the winning bidder a revised notice.
- (5) If a revised notice is given under subclause (4):
 - (a) the ACMA must include in the revised notice a date, not later than 10 working days after the date of the revised notice, by which the winning bidder may give the ACMA written notice whether it has elected to pay the winning price:
 - (i) in full; or
 - (ii) in instalments; and
 - (b) subclauses (2) and (3) apply as if the date mentioned in paragraph (1)(i) were the date included in the revised notice; and
 - (c) any previous notice given by the winning bidder under subclauses (2) or (3) is of no effect.

- (6) If, by the date mentioned in paragraph (1)(i), a winning bidder does not give the ACMA written notice whether it elects to pay the winning price in full or in instalments, the bidder is taken to have given the ACMA written notice that it elects to pay the winning price in full.
- (7) If, by the date mentioned in paragraph (1)(i), a winning bidder gives the ACMA written notice that it elects to pay the winning price in instalments, the winning bidder is not entitled to be issued a spectrum licence unless the winning bidder gives the ACMA on behalf of the Commonwealth the bank guarantee in accordance with subclause 3(3).

Note 1: If the winning bidder fails to pay an instalment other than the first instalment, the winning bidder, as the licensee of a spectrum licence, may contravene relevant licence conditions, as set out in the marketing plan, that are required to be included in the spectrum licence by section 67 of the Act.

Note 2: If any of the second instalment, third instalment, fourth instalment or fifth instalment are not paid in accordance with clause 4, the ACMA or the Commonwealth may require the authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) that has issued the bank guarantee to pay the amount secured by the bank guarantee.

- (8) If a spectrum licence is issued to a winning bidder in accordance with subclause 5(2), each of the first instalment, second instalment, third instalment, fourth instalment and fifth instalment is not refundable in any circumstances.
- (9) If a bank guarantee is given to the ACMA on behalf of the Commonwealth by email before the time set out in the marketing plan, the original guarantee must be received by the ACMA no later than 3 working days after that time (or, if the ACMA agrees to a later time, the agreed time) for the bank guarantee to be taken to have been given to the ACMA on behalf of the Commonwealth.

4 Terms of payment by instalments

- (1) If a winning bidder elects to pay the winning price in instalments:
- (a) the full amount of the winning price must be paid in 5 instalments; and
 - (b) each instalment must equal 20.32% of the winning price; and
 - (c) each instalment must be paid in accordance with the timeframes set out in subclauses (2) to (4).
- (2) The first instalment minus any eligibility payments already made by the winning bidder must be paid prior to the issue of a spectrum licence to the winning bidder.
- (3) The second instalment must be paid by:
- (a) if the spectrum licence comes into force on the day on which it is issued—the day which is 12 months from that day; or
 - (b) if the spectrum licence comes into force later than the day on which it is issued—a day which is no earlier than 12 months from the day the spectrum licence is issued but no later than 12 months from the day the spectrum licence comes into force.
- (4) Each of the third, fourth and fifth instalments must be paid by:

Part 3

- (a) for the third instalment—the first anniversary of the day by which the second instalment was payable;
- (b) for the fourth instalment—the second anniversary of the day by which the second instalment was payable;
- (c) for the fifth instalment—the third anniversary of the day by which the second instalment was payable.

Example 1: For a spectrum licence proposed to be issued and to come into force on 1 August 2021, and for which the winning price is \$1,000,000, the instalments would be the following amounts payable by the following times, if an election to pay in instalments is made:

- (a) a first instalment of \$203,200 minus any eligibility payments already made, by 31 July 2021;
- (b) a second instalment of \$203,200 by 1 August 2022;
- (c) a third instalment of \$203,200 by 1 August 2023;
- (d) a fourth instalment of \$203,200 by 1 August 2024;
- (e) a fifth instalment of \$203,200 by 1 August 2025.

If, in relation to the first instalment, there is a remainder for eligibility payments already made, the remainder will be deducted from the second instalment and any subsequent instalments (if necessary): see subclause 4(5).

Example 2: For a spectrum licence proposed to be issued on 1 August 2021 and to come into force on 1 November 2021, the date by which the second instalment must be paid must be no earlier than 1 August 2022 but no later than 1 November 2022. If the due date of payment of the second instalment is 31 October 2022, each of the third, fourth and fifth instalments must be paid by 31 October each year in 2023, 2024 and 2025, respectively.

- (5) If any eligibility payments already made exceed the first instalment, the remainder will be deducted from the second instalment and, if necessary, any further remainders will be deducted from subsequent instalments.

Part 3—Issue of spectrum licences

5 Issue of spectrum licence

- (1) If a winning bidder:
 - (a) elects to pay the winning price in full; and
 - (b) pays the balance of the winning price in accordance with subclause 3(2);

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

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

- (2) If a winning bidder:
 - (a) elects to pay the winning price in instalments; and
 - (b) pays the first instalment in accordance with subclause 4(2); and
 - (c) gives the ACMA on behalf of the Commonwealth the bank guarantee in accordance with subclause 3(3);

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

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

6 Default

- (1) If a winning bidder:
- (a) elects to pay the winning price in full; and
 - (b) does not pay the balance of the winning price in accordance with subclause 3(2);
- then:
- (c) the spectrum licence is not allocated to the winning bidder; and
 - (d) the allocation of spectrum licences under this instrument to other bidders is not affected; and
 - (e) section 70 applies to each lot (and associated spectrum assigned to each lot) that, but for this subclause, would have been included in a spectrum licence allocated to the winning bidder.

- (2) If a winning bidder:
- (a) elects to pay the winning price in instalments; and
 - (b) either, or both:
 - (i) does not pay the first instalment in accordance with subclause 4(2); or
 - (ii) does not give the ACMA on behalf of the Commonwealth the bank guarantee in accordance with subclause 3(3);

- then:
- (c) the spectrum licence is not allocated to the winning bidder; and
 - (d) the allocation of spectrum licences under this instrument to other bidders is not affected; and
 - (e) section 70 applies to each lot (and associated spectrum assigned to each lot) that, but for this subclause, would have been included in a spectrum licence allocated to the winning bidder.

Note 1: If the winning bidder fails to pay an instalment other than the first instalment, the winning bidder, as the licensee of a spectrum licence, may contravene relevant licence conditions, as set out in the marketing plan, that are required to be included in the spectrum licence by section 67 of the Act.

Note 2: If any of the second instalment, third instalment, fourth instalment or fifth instalment are not paid in accordance with clause 4, the ACMA or the Commonwealth may require the authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) that has issued the bank guarantee to pay the amount secured by the bank guarantee.

Note 3: See section 75 for when certain breaches of this instrument have occurred and section 79 in relation to other rights of the ACMA and the Commonwealth.