



Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021

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

Dated: 19 August 2021

Chris Jose
[signed]
Member

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

Australian Communications and Media Authority

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Part 1—Preliminary

1 Name

This is the *Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021*.

2 Commencement

This instrument commences on the day after the day 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 *Radiocommunications Act 1992*.

Note 1: To the extent 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.

Note 2: The following provisions of this instrument are made under subsection 294(1) of the Act, and all other provisions are made under subsection 60(1) of the Act:

- (a) section 10;
- (b) paragraph 28(1)(a);
- (c) paragraph 28(1)(c);
- (d) subsection 28(2);
- (e) paragraph 43(1)(a);
- (f) paragraph 43(1)(c);
- (g) subsection 43(2);
- (h) Division 2 of Part 6;
- (i) clause 17 of Schedule 2;
- (j) clause 18 of Schedule 3;
- (k) clause 7 of Schedule 4;
- (l) clause 8 of Schedule 4;
- (m) paragraph 9(c) of Schedule 4;
- (n) Schedule 5.

4 Interpretation

(1) In this instrument, unless the contrary intention appears:

850/900 MHz band means the following parts of the spectrum:

- (a) 814 MHz to 825 MHz;
- (b) 859 MHz to 870 MHz;
- (c) 890 MHz to 915 MHz;
- (d) 935 MHz to 960 MHz.

Note: For the parts of the 850/900 MHz band consisting of 824 MHz to 825 MHz and 869 MHz to 870 MHz, see clauses 10 and 11 of Schedule 4.

850 major population product has the same meaning as in subsection 5(1) of the marketing plan.

850 regional product has the same meaning as in subsection 5(1) of the marketing plan.

900 lower major population product has the same meaning as in subsection 5(1) of the marketing plan.

900 lower product: see subsection 5(6).

900 lower regional product has the same meaning as in subsection 5(1) of the marketing plan.

900 upper major population product has the same meaning as in subsection 5(1) of the marketing plan.

900 upper product: see subsection 5(7).

900 upper regional product has the same meaning as in subsection 5(1) of the marketing plan.

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

ACMA Act means the *Australian Communications and Media Authority Act 2005*.

ACMA staff has the meaning given by section 3 of the ACMA Act.

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

Act means the *Radiocommunications Act 1992*.

affiliated: see section 16.

allocated means:

- (a) for a lot of a product, other than a set-aside lot – allocated as a result of the primary stage or secondary stage; or
- (b) for a set-aside lot – allocated as a result of the procedures in Schedule 1; or
- (c) for the downshift metropolitan lot and the downshift regional lot – allocated as a result of clause 10 of Schedule 4.

allocation limits: see sections 13 and 14.

applicant means a person who has applied to become registered as a bidder.

Note: A person may apply under section 31, section 38 or section 48.

applicant information package: see subsection 30(1).

application deadline: see subsection 27(1).

application fee: see section 25.

application form: see paragraph 28(3)(a).

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 4.

assignment price: see subclauses 8(2) and 8(3), and paragraph 9(c), of Schedule 4.

assignment round: see clause 2 of Schedule 4.

assignment stage means the part of the auction:

- (a) commencing at the start of the first assignment round; and

- (b) ending immediately after the auction manager provides the results for every assignment round in accordance with clauses 12 and 13 of Schedule 4.

Note: The assignment stage also deals with the allocation of the downshift metropolitan lot and the downshift regional lot.

assignment winner: see subclause 8(8) and paragraph 9(b) of Schedule 4.

associate: see subsection 15(1).

auction means the auction of lots held in accordance with this instrument, and includes the allocation (if any) of set-aside lots, the downshift metropolitan lot and the downshift regional lot.

auction manager: see section 24.

auction period means the period:

- (a) commencing on the eligibility deadline; and
- (b) ending immediately after the auction manager provides the results for the auction in accordance with section 76.

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

balance of the winning price: see subsection 75(2).

bid:

- (a) in a clock round for the primary stage – see subclause 2(1) of Schedule 2; or
- (b) in a round for the secondary stage – see subclause 3(1) of Schedule 3; or
- (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 54.

clock round: see subsection 2(1) of Schedule 2.

confidential information: see section 18.

deed of acknowledgement means a deed of acknowledgement form that has been completed and executed by an applicant as a deed 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 or with the requirements for executing a deed.

Note: Strict compliance with the form is required.

deed of acknowledgement form: see paragraph 28(3)(b).

deed of confidentiality means a deed of confidentiality form that has been completed and executed as a deed 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 or with the requirements for executing a deed.

Note: Strict compliance with the form is required.

deed of confidentiality form: see paragraph 28(3)(d).

deed of financial security means a deed of financial security form that has been completed and executed as a deed 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 or with the requirements for executing a deed.

deed of financial security form: see paragraph 28(3)(c).

downshift metropolitan lot has the meaning given by subsection 5(1) of the marketing plan.

downshift regional lot has the meaning given by subsection 5(1) of the marketing plan.

eligibility deadline: see subsection 27(2) and paragraph 40(9)(a).

eligibility nomination form: see paragraphs 31(5)(a) and 41(9)(b).

eligibility payment: see section 42 and subsection 46(4).

eligibility points: see subclause 12(1) of Schedule 2.

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

extended eligibility deadline: see paragraphs 43(3)(b) and 51(11)(a).

final clock round: see clause 16 of Schedule 2.

lot: see subsection 5(1).

lot rating: see paragraphs 28(1)(b) and 43(1)(b).

major population product: see subsection 5(4).

marketing plan means the *Radiocommunications Spectrum Marketing Plan (850/900 MHz Band) 2021*.

maximum eligibility points:

- (a) for an applicant – means the number of eligibility points specified in an eligibility nomination form or updated eligibility nomination form, in accordance with subsection 41(1); or
- (b) for a bidder – means the maximum number of eligibility points secured by the bidder under section 42.

minimum spectrum requirement: see subsection (3).

new applicant:

- (a) for sections 38 and 39 – see subsection 38(1); or
- (b) for sections 48, 49 and 50 – see subsection 48(1).

new application deadline: see paragraph 43(3)(a).

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

pre-bidding phase: see paragraph 59(1)(b).

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

primary stage means the part of the auction:

- (a) commencing at 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 2.

primary winner: see subclause 17(1) of Schedule 2.

product: see subsection 5(2).

provisional minimum spectrum requirement: see subsection (4).

provisional start demand, of an applicant for lots of a product, means the number of lots of the product specified by the applicant in a completed eligibility nomination form or completed updated eligibility nomination form in accordance with any of the following:

- (a) subparagraph 31(7)(a)(i);
- (b) paragraph 38(7)(a);
- (c) paragraph 46(2)(a);
- (d) subparagraph 48(4)(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—850/900 MHz Band) Declaration 2020*.

regional product: see subsection 5(5).

register means the register of bidders maintained by the ACMA under section 53.

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.

relevant associate has the same meaning as in subsection 4(1) of the spectrum licence limits direction.

relevant group of persons: see subsections 15(4) and 15(5).

residual lot: see subclause 1(1) of Schedule 3.

round: for the secondary stage, see subclause 3(1) of Schedule 3.

secondary price: see subclause 18(3) of Schedule 3.

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 19 and 20 of Schedule 3.

secondary winner: see subclauses 15(4) and 16(2) of Schedule 3.

set-aside applicant means any of the following:

- (a) one of:
 - (i) Optus Mobile Pty Limited (ACN 054 365 696) (**Optus**); or
 - (ii) a relevant associate of Optus;
- (b) one of:
 - (i) TPG Telecom Limited (ACN 096 304 620) (**TPG**); or
 - (ii) a relevant associate of TPG.

set-aside lot: see clause 2 of Schedule 1.

set-aside participant: see subsection (2).

set-aside price: see paragraph 28(1)(c) and paragraph 43(1)(c).

size: see subsection 5(3).

spectrum licence limits direction means the *Radiocommunications (Spectrum Licence Limits – 850/900 MHz Band) Direction 2021*.

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

starting price: see paragraph 28(1)(a) and paragraph 43(1)(a).

supply: see subclause 2(1) of Schedule 2.

total assignment price: see subclause 8(9) of Schedule 4.

total size: see paragraph 5(3)(b).

updated eligibility nomination form: see subsection 43(6) and paragraph 51(11)(b).

varied eligibility deadline: see subsection 40(3).

varied eligibility nomination form: see paragraph 40(7)(a).

varied extended eligibility deadline: see subsection 51(6).

varied updated eligibility nomination form: see paragraph 51(9)(a).

winning bidder means any of the following:

- (a) a primary winner;
- (b) a secondary winner;
- (c) a set-aside participant;

who has frequency ranges assigned to lots of a product at the end of the assignment stage.

winning price: see subsection 75(1).

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

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

- (a) ACCC;
- (b) ACMA;
- (c) frequency band;
- (d) licence;
- (e) radiocommunications device;
- (f) spectrum;
- (g) 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, the following provisions determine whether a person is, or whether no person is, a **set-aside participant**:
- (a) paragraph 31(3)(b);
 - (b) paragraph 31(4)(b);
 - (c) paragraph 38(5)(d);
 - (d) subsection 40(5);
 - (e) paragraph 40(6)(c);
 - (f) subsection 45(2);

- (g) subsection 45(3);
- (h) paragraph 48(2)(b);
- (i) paragraph 51(8)(f);
- (j) paragraph 52(7)(a);
- (k) subparagraph 52(7)(b)(iii).

(3) In this instrument:

- (a) for a set-aside participant, the **minimum spectrum requirement**, in relation to lots of a product other than:
 - (i) a 900 upper product; or
 - (ii) a 900 lower product;means the number of lots of the product entered by, or taken to be entered by, the participant as its minimum requirement in the pre-bidding phase of the primary stage in accordance with paragraph 3(3)(b) of Schedule 2; or
- (b) for any other bidder, the **minimum spectrum requirement**, in relation to lots of a product other than a 900 lower 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(3)(b) of Schedule 2.

Note 1: No bidder may select a minimum spectrum requirement for a 900 lower product.

Note 2: No set-aside participant may select a minimum spectrum requirement for a 900 upper product.

Note 3: The only number of lots that may be selected as a minimum spectrum requirement for a product is 2 lots.

(4) In this instrument:

- (a) for a set-aside participant, the **provisional minimum spectrum requirement** in relation to lots of a product other than:
 - (i) a 900 upper product; or
 - (ii) a 900 lower product;means the number of lots of the product selected by the participant as its minimum requirement in a completed eligibility nomination form in accordance with any of the following:
 - (iii) subparagraph 31(7)(a)(iii);
 - (iv) paragraph 38(7)(a);
 - (v) paragraph 46(2)(c);
 - (vi) subparagraph 48(4)(a)(iii); or
- (b) for any other applicant, the **provisional minimum spectrum requirement** in relation to lots of a product other than a 900 lower 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 any of the following:
 - (i) subparagraph 31(7)(a)(iii);
 - (ii) paragraph 38(7)(a);
 - (iii) paragraph 46(2)(c);
 - (iv) subparagraph 48(4)(a)(iii).

Note 1: No applicant may select a provisional minimum spectrum requirement for a 900 lower product.

Note 2: No set-aside participant may select a provisional minimum spectrum requirement for a 900 upper product.

Note 3: The only number of lots that may be selected as a provisional minimum spectrum requirement for a product is 2 lots.

- (5) 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.

- (6) 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, unless the contrary intention appears, **lot**, other than in relation to the downshift metropolitan lot and the downshift regional lot, means a unit of a product that is available in the auction.

- (2) In this instrument, unless the contrary intention appears, each of the following is a **product**:

- (a) the 850 major population product;
- (b) the 850 regional product;
- (c) the 900 lower major population product;
- (d) the 900 lower regional product;
- (e) the 900 upper major population product;
- (f) the 900 upper regional product.

Note 1: In accordance with the marketing plan, there are 2 lots of the 850 major population product, 2 lots of the 850 regional product, 1 lot of the 900 lower major population product, 1 lot of the 900 lower regional product, 4 lots of the 900 upper major population product and 4 lots of the 900 upper regional product.

Note 2: However, there may be fewer than 4 lots of the 900 upper major population product and fewer than 4 lots of the 900 upper regional product available in the primary stage: see Schedules 1 and 2.

- (3) In this instrument:

- (a) the **size** of each lot of a product, when expressed in MHz, is the lot bandwidth set out for the product in subsection 10(6) of the marketing plan; and
- (b) the **size** or **total size** of lots of a product, when expressed in MHz, is the total lot bandwidth of those lots; and
- (c) the **size** of each of the downshift metropolitan lot and the downshift regional lot, when expressed in MHz, is the lot bandwidth set out for that lot in subsection 10(6) of the marketing plan.

Note 1: In accordance with the marketing plan, the size of a single lot of each product is 2 x 5 MHz (or 10 MHz).

Note 2: In accordance with the marketing plan, the size of each of the downshift metropolitan lot and the downshift regional lot is 2 x 1 MHz (or 2 MHz).

- (4) In this instrument, unless the contrary intention appears, each of the following is a **major population product**:

- (a) the 850 major population product;
- (b) the 900 lower major population product;
- (c) the 900 upper major population product.

- (5) In this instrument, unless the contrary intention appears, each of the following is a **regional product**:

- (a) the 850 regional product;

- (b) the 900 lower regional product;
 - (c) the 900 upper regional product.
- (6) In this instrument, unless the contrary intention appears, each of the following is a **900 lower product**:
- (a) the 900 lower major population product;
 - (b) the 900 lower regional product.
- (7) In this instrument, unless the contrary intention appears, each of the following is a **900 upper product**:
- (a) the 900 upper major population product;
 - (b) the 900 upper regional product.

6 References to other instruments

In this instrument, unless the contrary intention appears:

- (a) a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- (b) a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force or existing 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.

Note 3: 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, in accordance with subsection (2), to the email address specified in the applicant information package.
- Note: Subsections 31(10), 38(8), 46(5) and 48(7) 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 70 or deed – in a PDF format or another format approved by the auction manager; or
 - (ii) for any other document – in a Word or PDF format, or another format approved by the auction manager.
- (3) The auction manager may approve a format for documents for the purposes of either or both subparagraphs (2)(b)(i) and (ii).
- (4) A deed of financial security may be given to the ACMA under this instrument as one or more deeds of financial security.
- (5) If more than one deed of financial security is given to the ACMA for the purposes of a single applicant or bidder, each such deed of financial security must be given a unique identifier.

- (6) If a deed of financial security is given to the ACMA under this instrument, it is given to the ACMA on behalf of the Commonwealth.

8 Statutory declaration for body corporate

If this instrument requires a body corporate to make a statutory declaration, the statutory declaration must be made by a director or secretary of the body corporate.

9 Signing or executing documents other than deeds and statutory declarations

- (1) If:
- (a) this instrument permits or requires a person to give the ACMA or the auction manager a document; and
 - (b) that document is required to be signed or executed; and
 - (c) the document is not required to be made as a statutory declaration or executed as a deed;

then, unless the contrary intention appears, the document may be signed or executed electronically.

- (2) If:
- (a) this instrument permits or requires a person to give the ACMA or the auction manager a document; and
 - (b) that document is not a statutory declaration or a deed; and
 - (c) that document is required to be signed or executed; and
 - (d) the signature or execution is required to be witnessed;
- then, unless the contrary intention appears, the signature or execution may be witnessed by audio-visual link, if the person witnessing the signature or execution (**witness**):
- (e) observes the person signing or executing the document (**signatory**) doing so in real time; and
 - (f) confirms the signature or execution was witnessed by signing the document or a copy of the document; and
 - (g) is reasonably satisfied that the document the witness signs is the same document, or a copy of the document, signed or executed by the signatory; and
 - (h) endorses the document, or the copy of the document, with a statement specifying the method used to witness the signature or execution of the signatory.

Note: Other Commonwealth legislation, and State and Territory legislation, may allow for deeds or statutory declarations to be signed or executed electronically, or for the signature or execution of deeds or statutory declarations to be witnessed by audio-visual link or by other means.

10 Payments of amounts

- (1) Except where otherwise specified, this section applies to all amounts paid, or to be paid, to the ACMA under this instrument.
- (2) The amount must be paid in Australian currency.
- (3) The amount must be paid by bank cheque or electronic transfer.
- (4) An amount that is paid by electronic transfer must be made by any of the following methods:
 - (a) direct transfer into the bank account that has 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) for a winning bidder's balance of the winning price – BPAY payment:
 - (i) only if, under Schedule 5, 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 as a participant in BPAY, either via telephone or internet access;
 - (c) for a winning bidder's balance of the winning price – credit card payment:
 - (i) only if, under Schedule 5, 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).
- (5) An amount is taken to have been paid by a deadline specified in this instrument if:
 - (a) the ACMA receives a bank cheque for that 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.
- (6) 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 (6) is that an applicant or bidder must add the value of any bank charge or government duty to the amount of a payment.

- (7) If an amount payable under this instrument is not an amount of whole dollars, the amount is rounded up to the next dollar.
- (8) If an amount is paid, or is to be paid, to the ACMA under this instrument, it is paid, or it is to be paid, to the ACMA on behalf of the Commonwealth.
- (9) If an amount is paid, or is to be paid, by the ACMA under this instrument, it is paid, or it is to be paid, by the ACMA on behalf of the Commonwealth.

Note: This section also applies to spectrum access charges payable under section 294 of the Act. As such, this section relates to Division 2 of Part 6 of this instrument and is disallowable under section 42 of the *Legislation Act 2003*.

11 Giving documents to bidders

- (1) If a provision in this instrument requires, authorises or permits the auction manager to give information to a bidder, or to notify or tell a bidder of a matter, whether or not in writing, the auction manager may give the information to the bidder, or notify or tell the bidder of the matter, by using the auction system.
- (2) Subsection (1) does not limit any provision of this instrument, and the auction manager is not obliged to give information to a bidder, or notify or tell a bidder of a matter, by using the auction system.

Part 2—General limits on allocation of spectrum

Division 1 General allocation limits

12 Interpretation

In this Part:

800 MHz band means the following parts of the spectrum:

- (a) 825 MHz to 845 MHz;
- (b) 870 MHz to 890 MHz.

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

major population area has the meaning given by subsection 5(1) of the marketing plan.

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

regional area has the meaning given by subsection 5(1) of the marketing plan.

relevant spectrum licence means a spectrum licence in the 800 MHz band that is in force immediately before the application deadline.

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.

sub-1 GHz band means the part of the spectrum up to 1 GHz.

13 Meaning of allocation limits

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 relevant group of persons, having permission to use more spectrum in the sub-1 GHz band than the limit set out in section 14.

Note: The Minister has given a direction to the ACMA, under subsection 60(10) of the Act, that limits be imposed on the aggregate parts of the spectrum in the sub-1 GHz band that, under existing spectrum licences and as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may be used by a person or relevant group of persons. See section 7 of the spectrum licence limits direction.

14 Allocation limits

- (1) No person, or relevant group of persons, may, as a result of the allocation of spectrum licences under this instrument, use:
 - (a) more than an aggregate of 82 MHz of the sub-1 GHz band under spectrum licences in the major population area; or
 - (b) more than an aggregate of 92 MHz of the sub-1 GHz band under spectrum licences in the regional area.
- (2) For the purposes of subsection (1), if:
 - (a) a person or relevant group of persons holds a relevant spectrum licence that authorises the operation of radiocommunications devices in one or more parts of the major population area (but not the entire major population area); and

(b) the population of that part of the major population area, or the aggregate population of those parts of the major population area, is insignificant;
the relevant spectrum licence is to be treated as if it did not apply in the major population area.

- (3) For the purposes of paragraph (2)(b):
- (a) the population of a part of the major population area is *insignificant* if, and only if, the population of that part of the major population area is less than 25% of the total population of the major population area determined in accordance with the most recent data in the HCIS – List of Population Data Document published by the ACMA on its website, as that document existed at the time the spectrum licence limits direction was made; and
 - (b) the aggregate population of parts of the major population area is *insignificant* if, and only if, the aggregate population of those parts of the major population area is less than 25% of the total population of the major population area determined in accordance with the most recent data in the HCIS – List of Population Data Document published by the ACMA on its website, as that document existed at the time the spectrum licence limits direction was made.

Note: The HCIS – List of Population Data Document may be accessed, free of charge, from the ACMA's website at www.acma.gov.au.

Division 2 Associates, relevant group of persons and affiliations

15 Meaning of *associate* and *relevant 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.
- (2) For paragraph (1)(c), a *relevant agreement* means an agreement, arrangement or understanding:

- (a) whether formal or informal, or partly formal and partly informal; and
 - (b) whether written or oral, or partly written and partly oral; and
 - (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;
- other than a roaming services agreement or an agreement between carriers provided for by or under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.
- (3) For paragraph (1)(c), a reference to ***part of the spectrum referred to in the re-allocation declaration*** is a reference to the 850/900 MHz band.
 - (4) In this instrument, ***relevant group of persons*** means either of the following:
 - (a) a person and all associates of that person; or
 - (b) subject to subsection (5) – any 2 or more groups referred to in paragraph (a) that have at least one member in common.
 - (5) For the purposes of paragraph (4)(b), 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.

16 Affiliation between applicants or bidders

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

Note: Paragraph 15(4)(b) and this section mean that 2 applicants or bidders are affiliated if they have an associate in common. However, see subsection 15(5).

17 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; and
 - (b) updated application forms; and
 - (c) statutory declarations and statements given in accordance with this instrument.
- (2) The ACMA may have regard to any other information that it considers relevant.

Part 3—Confidentiality

18 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 applicant under section 32, section 39, or section 49, or to the bidder under paragraphs 54(2)(d) and (e), 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 of the applicant or bidder, or a proposed provisional start demand or proposed start demand under consideration by the applicant or bidder; and
- (i) the bidding strategy of the applicant or bidder; 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 in the 850/900 MHz band; 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 of another applicant or bidder; or
 - (iii) start demands or proposed start demands of another applicant or bidder; or
 - (iv) the bidding strategy of another applicant or bidder; and
- (l) information that, if disclosed, could be reasonably expected to affect, or be capable of affecting, the outcome of the auction.

19 Obligation not to disclose confidential information

- (1) Each of the following persons must not, either directly or indirectly, disclose confidential information of an applicant or bidder about the auction to any person:
 - (a) the applicant or bidder;
 - (b) a related person of the applicant or bidder who has knowledge of the confidential information;
 - (c) a contractor of an applicant or bidder who has knowledge of the confidential information.
- (2) Subsection (1) does not prevent a person 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 the auction; or
 - (c) to the ACMA; or
 - (d) for an applicant or bidder – to a related person of the applicant or bidder; or

- (e) for a related person of an applicant or bidder – to the 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 the 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; or
- (h) as authorised by this instrument; or
- (i) 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 23.

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

20 Duration of confidentiality obligation

Section 19 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 73 that the applicant's confidentiality obligation is at an end; or
- (b) in relation to a bidder (whether or not a winning bidder) – the ACMA announces or publishes the information mentioned in subsection 79(1).

Note: The ACMA announces or publishes the information mentioned in subsection 79(1) only after winning bidders are notified in accordance with subsection 79(2).

21 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 19; 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.

22 Notice of breach of confidentiality

- (1) This section applies 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:
 - (a) disclosed confidential information in breach of section 19; or
 - (b) received confidential information as a result of a breach of section 19.
- (2) In relation to the applicant or bidder whose confidential information has been disclosed, 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.
- (3) If the ACMA forms the belief before the end of the auction period, the ACMA is not required to act under subsection (2) before the auction period ends, but must act under that subsection as soon as practicable after the auction period ends.

23 Deed of confidentiality required from related persons and contractors

- (1) A related person of an applicant or bidder who has knowledge of confidential information of the applicant or bidder 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 confidential information of the applicant or bidder 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 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: www.acma.gov.au. See paragraphs 29(1)(h) and 30(1)(k).

Part 4—Procedures before auction

Division 1 Preliminary

24 Auction manager

- (1) The ACMA must, in writing, appoint a person (***auction manager***) to manage the auction.
- (2) The person appointed as the auction manager must be:
 - (a) a member within the meaning of the ACMA Act; 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 ACMA Act.

25 Application fee

Before it publishes a notice under subsection 29(1), the ACMA must, in writing, set a fee (***application fee***) to be paid by applicants.

26 Application fee not refundable except in certain circumstances

- (1) Subject to subsection (2), an application fee paid by an applicant or bidder under this instrument is not refundable in any circumstances, including:
 - (a) if the applicant withdraws from the auction; or
 - (b) if the applicant or bidder is taken to withdraw from the auction; or
 - (c) if the applicant or bidder is not permitted to make a bid in the auction.
- (2) An application fee paid by an applicant under this instrument is refundable if both the following occur:
 - (a) the ACMA varies a starting price under paragraph 43(1)(a); and
 - (b) the applicant withdraws its application before the extended eligibility deadline by giving the ACMA notice in writing.
- (3) If subsection (2) applies in relation to an applicant, the ACMA must refund the application fee no later than 6 months after the applicant withdraws its application.

27 Application deadline and eligibility deadline

- (1) Before it publishes a notice under subsection 29(1), the ACMA must, in writing, set a date and time (***application deadline***) before which:
 - (a) completed application forms, completed deeds of acknowledgement and completed deeds of confidentiality by applicants must be received by the ACMA; and
 - (b) the application fee must be paid to the ACMA.
- (2) Before it publishes a notice under subsection 29(1), the ACMA must, in writing, set a date and time (***eligibility deadline***) before which:
 - (a) completed eligibility nomination forms must be received by the ACMA; and
 - (b) eligibility payments must be made to the ACMA, or deeds of financial security must be given to the ACMA, or a combination of both.

28 Starting prices, lot ratings and forms

- (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 **set-aside price** for set-aside lots of the 900 upper major population product and for set-aside lots of the 900 upper regional product.

Note: Paragraphs (a) and (c) relate to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act, and are disallowable under section 42 of the *Legislation Act 2003*.

- (2) For the purposes of subsection (1)(c):
 - (a) the set-aside price for set-aside lots of the 900 upper major population product must be:
 - (i) at least 120% of the starting price for the lots of the 900 upper major population product; and
 - (ii) not greater than 130% of the starting price for the lots of the 900 upper major population product;
 - (b) the set-aside price for set-aside lots of the 900 upper regional product must be:
 - (i) at least 120% of the starting price for the lots of the 900 upper regional product; and
 - (ii) not greater than 130% of the starting price for the lots of the 900 upper regional product.

Note: Subsection (2) 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*.

- (3) After setting the amounts in subsection (1), the ACMA must approve the following forms:
 - (a) a form (**application form**) for applying to participate in the auction that complies with subsection (4);
 - (b) a form (**deed of acknowledgement form**) that includes a statement to the effect that an applicant understands and agrees to be bound by the provisions of this instrument;
 - (c) a form (**deed of financial security form**) for securing an applicant's maximum eligibility points;
 - (d) a form (**deed of confidentiality form**) that includes a statement to the effect that the person giving the deed agrees not to disclose confidential information before section 19 ceases to apply to the person;
 - (e) one or more forms for the purposes of the following:
 - (i) section 35;
 - (ii) paragraph 38(6)(c);
 - (iii) section 50;
 - (iv) section 70.
- (4) The application form must include a requirement for, and a guide to:
 - (a) identifying whether an applicant is a set-aside applicant; and
 - (b) if the applicant is a set-aside applicant – stating whether the set-aside applicant elects to take up a set-aside lot of both:
 - (a) the 900 upper major population product; and
 - (b) the 900 upper regional product.

Division 2 Advertising the auction

29 Notice advertising auction

- (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 application deadline; and
 - (f) states the eligibility deadline; and
 - (g) states that applications may only be withdrawn before the eligibility deadline or the 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.

30 Applicant information package

- (1) The *applicant information package* must contain the following documents and 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) the starting price for the lots of each product in the auction;
 - (g) the lot rating for the lots of each product in the auction;
 - (h) the set-aside price for set-aside lots of the 900 upper major population product, and the set-aside price for set-aside lots of the 900 upper regional product;
 - (i) the application form;
 - (j) the deed of acknowledgement form;
 - (k) the deed of confidentiality form;
 - (l) the amount of the application fee;
 - (m) the application deadline, and information about the circumstances in which there may be a new application deadline;
 - (n) each form approved by the ACMA for the purposes of the following:
 - (i) section 35;
 - (ii) paragraph 38(6)(c);
 - (iii) section 50;
 - (iv) section 70;
 - (o) the deed of financial security form;
 - (p) the eligibility deadline, and information about the circumstances in which there may be an extended eligibility deadline;

- (q) advice that the eligibility deadline, or the extended eligibility deadline (if there is one), is the last time for withdrawal from the auction;
 - (r) the physical address for giving documents to the ACMA;
 - (s) the email address for giving documents to the ACMA.
- (2) The applicant information package may also contain other information about the auction.
- (3) The ACMA must publish the applicant information package on its website as soon as practicable after notice of the auction is published under subsection 29(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.

Division 3 Application to participate in the auction

31 Making an application

- (1) A person may apply to become registered as a bidder in the auction by:
- (a) subject to subsection (2), 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 10.

- (2) If the applicant is a set-aside applicant, to apply to become registered as a bidder in the auction the person must give the ACMA a completed application form stating whether the person elects to take up a set-aside lot of both:
- (a) the 900 upper major population product; and
 - (b) the 900 upper regional product.
- (3) If one or more set-aside applicants give the ACMA a completed application form that, in each case, states that the set-aside applicant elects to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product:
- (a) subsection 62(1) applies in relation to the auction; and
 - (b) each of those set-aside applicants is a *set-aside participant*.
- (4) If no set-aside applicant gives the ACMA a completed application form that states that the set-aside applicant elects to take up a set-aside lot:
- (a) subsection 62(2) applies in relation to the auction; and
 - (b) there are no *set-aside participants*.
- (5) As soon as practicable after the application deadline, and at least 15 working days before the eligibility deadline, the ACMA must:
- (a) approve a form (*eligibility nomination form*) that complies with subsection (6); and
 - (b) tell each applicant, in writing, how many set-aside participants there are (if any); and
 - (c) if there is only one set-aside participant – tell each applicant the identity of that set-aside participant;
 - (d) tell each applicant, in writing, the supply of:
 - (i) the 900 upper major population product; and

- (ii) the 900 upper regional product; and
- (e) give each applicant a copy of the eligibility nomination form; and
- (f) give each applicant 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 its maximum eligibility points.

Note: For the 900 upper products, *supply* depends upon whether one or more set-aside applicants have elected to take up set-aside lots.

- (6) The eligibility nomination form must include 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, at the starting price for the lots of the product; and
 - (b) calculating and specifying the maximum eligibility points of an applicant based on those provisional start demands; and
 - (c) in relation to the lots of each product, other than:
 - (i) a 900 lower product; or
 - (ii) for a set-aside participant – a 900 upper product;either:
 - (iii) not selecting a provisional minimum spectrum requirement; or
 - (iv) selecting 2 lots as the provisional minimum spectrum requirement; for the lots of the product.
- (7) 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 those specified provisional start demands; and
 - (iii) in relation to the lots of each product, other than:
 - (A) a 900 lower product; or
 - (B) for a set-aside participant – a 900 upper product;states that the applicant either:
 - (C) does not select a provisional minimum spectrum requirement; or
 - (D) selects 2 lots as the provisional minimum spectrum requirement; for the lots of the product; and
 - (b) in accordance with section 42, do one of the following:
 - (i) make an eligibility payment to the ACMA; or
 - (ii) give the ACMA a deed of financial security; or
 - (iii) make an eligibility payment and give a deed of financial security to the ACMA.

Note: If the eligibility payment or deed of financial security, or both, is not for the amount calculated in accordance with section 42, that may have consequences for the applicant in the auction.

- (8) Subject to Division 5, if an applicant fails to comply with subsection (7):
 - (a) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – the applicant is taken to have withdrawn its application.

- (9) Subject to subsections 45(1), 46(2) and 46(4), an applicant may give the ACMA an updated, additional or replacement document:
 - (a) for a document mentioned in paragraph (1)(a), (1)(b) or (1)(c) – at any time until the application deadline, but not after the application deadline; or
 - (b) for a document mentioned in paragraph (7)(a) or, subject to section 42, paragraph (7)(b) – at any time until the eligibility deadline, but not after the eligibility deadline.
- (10) If a deed of financial security (for subparagraph (7)(b)(ii) or (iii)) is given to the ACMA 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).
- (11) If an applicant fails to comply with subsection (10):
 - (a) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – the applicant is taken to have withdrawn its application.
- (12) If subsection (8) or (11) applies, the ACMA must, in writing:
 - (a) for a set-aside participant – tell the set-aside participant that they are not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – tell the applicant that they are taken to have withdrawn their application.

32 Initial auction information provided to applicants

After the application deadline, the ACMA must give each applicant the following:

- (a) information about using the auction system;
- (b) information about making entries in the auction system during the pre-bidding phase;
- (c) information about making bids in the auction system during the primary stage, secondary stage and assignment stage.

33 Provisional start demand validity rules for application

For the purposes of the following:

- (a) subparagraph 31(7)(a)(i);
- (b) paragraph 38(7)(a);
- (c) paragraph 46(2)(a);
- (d) subparagraph 48(4)(a)(i);

a provisional start demand of an applicant, for lots of a product, is valid if both the following apply in relation to the provisional start demand:

- (e) the total size of the sum of:
 - (i) the provisional start demand of the applicant for the lots of the product (***the relevant product***); and
 - (ii) if the relevant product is a major population product – the sum of the provisional start demands of the applicant for lots of each other major population product; and
 - (iii) if the relevant product is a regional product – the sum of the provisional start demands of the applicant for lots of each other regional lot; and
 - (iv) if the relevant product is a major population product and the applicant is a set-aside participant – 1 set-aside lot of the 900 upper major population product; and

- (v) if the relevant product is a regional product and the applicant is a set-aside participant – 1 set-aside lot of the 900 upper regional product;
does not exceed the applicant's allocation limits (when expressed in MHz); and
- (f) the number of lots for the applicant's provisional start demand for the product is not greater than the number of lots for the supply of the product.

Note 1: See section 7 of the spectrum licence limits direction.

Note 2: For the 900 upper products, *supply* depends upon whether one or more set-aside applicants have elected to take up set-aside lots.

34 Applicants to notify the ACMA if application information incorrect

- (1) If an applicant knows that any of the information it has given to the ACMA for the purposes of its application is incorrect, or has become incorrect, the applicant must immediately give the ACMA the correct information.
- (2) The auction manager may correct information in an 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.
- (3) However, after the application deadline, the auction manager cannot make changes to the following statements in an application:
 - (a) if, in its application, a set-aside applicant stated that it elects to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product – that statement;
 - (b) if, in its application, a set-aside applicant stated that it did not elect to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product – that statement.
- (4) A statement in an application that is mentioned in subsection (3) is taken to be correct for all purposes.

Note: Before the application deadline, an applicant may give the ACMA a replacement application in accordance with subsection 31(9).

35 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 in applications as the associates of the 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.

36 Failure to give statutory declaration

If an applicant does not give the ACMA a statutory declaration in accordance with section 35, the applicant is taken to have withdrawn its application.

Note: If an applicant that is taken to have withdrawn its application under this section is a set-aside participant, see section 40 of this instrument and paragraph 6(2)(c) of the spectrum licence limits direction.

37 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 affiliated 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:
 - (i) each affiliated applicant must withdraw its application, and a new applicant must submit an application under section 38; or
 - (ii) each affiliated applicant, but one, must withdraw its application.
- (2) Within 8 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 8 working days, each of the affiliated applicants is taken to have withdrawn its application.
- (4) If, within those 8 working days, some of the affiliated applicants withdraw their applications but more than one affiliated applicant does not, each of the remaining affiliated applicants is taken to have withdrawn its application.
- (5) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (3) or (4).

Note: If an applicant that is taken to have withdrawn its application under subsection (3) or (4) is a set-aside participant, see section 40 of this instrument and paragraph 6(2)(c) of the spectrum licence limits direction.

38 Requirements for new application

- (1) If the members of a group of affiliated applicants notified by the ACMA under subsection 37(1) decide that a new applicant (*new applicant*) is 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 8 working days of the ACMA notifying the affiliated applicants under subsection 37(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 10.
- (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 in applications as the associates of the other applicants.
 - (4) The updated information does not need to include those applicants who have already withdrawn.
 - (5) If:
 - (a) the new applicant is a set-aside applicant; and
 - (b) the completed application form given under subsection (2) states that the set-aside applicant elects to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product;

then:

- (c) subsection 62(1), if it did not already apply, applies in relation to the auction; and
- (d) the new applicant is a *set-aside participant*.

- (6) An application is not valid unless the new applicant, 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) gives the ACMA a deed of acknowledgement executed by the new applicant; and
 - (b) gives the ACMA a deed of confidentiality executed by the new applicant; and
 - (c) makes and gives the ACMA a statutory declaration that the new applicant is not affiliated with any other applicant mentioned in the updated information.
 - (7) 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 31(7)(a); or
 - (ii) a completed updated eligibility nomination form, which includes the matters set out in subsection 46(2);as appropriate; and
 - (b) in accordance with section 42, do one of the following:
 - (i) make an eligibility payment to the ACMA; or
 - (ii) give the ACMA a deed of financial security; or
 - (iii) make an eligibility payment and give a deed of financial security to the ACMA.
- Note: If the eligibility payment or deed of financial security, or both, is not for the amount calculated in accordance with section 42, that may have consequences for the new applicant in the auction.
- (8) If a deed of financial security (for subparagraph (7)(b)(ii) or (iii)) is given to the ACMA by email before the time specified in subsection (7), 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).
 - (9) Subject to Division 5, if the new applicant fails to comply with subsection (7) or subsection (8):
 - (a) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – the new applicant is taken to have withdrawn its application.
 - (10) If, at any time before the new applicant is registered as a bidder, the ACMA is satisfied that the new applicant is affiliated with one or more other applicants who have not withdrawn their applications (including another applicant who has applied under this section), the new applicant and each of the other applicants is taken to have withdrawn its application.
 - (11) The ACMA must tell an applicant in writing:
 - (a) for a set-aside participant – that under paragraph (9)(a) it is not entitled to bid during the primary stage and the secondary stage; or
 - (b) for a new applicant – that it is taken to have withdrawn its application under paragraph (9)(b) or subsection (10) or its application is not valid under subsection (6); or

- (c) for any applicant – that it is taken to have withdrawn its application under subsection (10).

Note: If subsection (10) applies to a set-aside participant, see section 40 of this instrument and paragraph 6(2)(c) of the spectrum licence limits direction.

39 Initial auction information provided to new applicants

After an application is made under section 38, the ACMA must give the new applicant the following:

- (a) information about using the auction system;
- (b) information about making entries in the auction system during the pre-bidding phase;
- (c) information about making bids in the auction system during the primary stage, secondary stage and assignment stage.

40 Compliance or non-compliance with allocation limits procedures – effect on supply of 900 upper products

Application of section

- (1) If:
 - (a) an applicant is a set-aside participant; and
 - (b) the applicant is taken to have withdrawn its application under section 36, section 37 or subsection 38(10); and
 - (c) at the time the applicant is taken to have withdrawn its application, the ACMA has not set an extended eligibility deadline under paragraph 43(3)(b);this section applies.
- (2) If:
 - (a) the ACMA receives an application under subsection 38(2); and
 - (b) the applicant is a set-aside participant; and
 - (c) the applicant is not taken to have withdrawn its application under subsection 38(10); and
 - (d) at the time the ACMA receives the application, the ACMA has not set an extended eligibility deadline under paragraph 43(3)(b);this section applies.

Effect on supply of 900 upper products

- (3) If this section applies, the ACMA may vary the eligibility deadline (***varied eligibility deadline***).
- (4) The varied eligibility deadline must be later than:
 - (a) if the ACMA makes its decision under subsection (3) before the eligibility deadline – the eligibility deadline; or
 - (b) if the ACMA makes its decision under subsection (3) after the eligibility deadline – the day on which the ACMA made its decision under subsection (3).
- (5) If this section applies because of subsection (1), the applicant that is taken to have withdrawn its application ceases to be a ***set-aside participant***.

- (6) If, at the application deadline, there was at least one set-aside participant but, as a result of the operation of subsection (5), there are no set-aside participants, then from the time the last applicant is taken to have withdrawn its application:
- (a) subsection 62(1) ceases to apply in relation to the auction; and
 - (b) subsection 62(2) applies in relation to the auction; and
 - (c) there are no *set-aside participants*.
- (7) If the ACMA varies the eligibility deadline under subsection (3), the ACMA must:
- (a) approve a form (*varied eligibility nomination form*) that complies with subsection (8); and
 - (b) tell each applicant, in writing, how many set-aside participants there are (if any); and
 - (c) if there is only one set-aside participant – tell each applicant the identity of that set-aside participant;
 - (d) tell each applicant, in writing:
 - (i) what the supply of the 900 upper major population product is; and
 - (ii) what the supply of the 900 upper regional product is; and
 - (e) give each applicant a copy of the varied eligibility nomination form.
- Note: For the 900 upper products, *supply* depends upon whether one or more set-aside applicants have elected to take up set-aside lots.
- (8) The varied eligibility nomination form must include 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, at the starting price for the lots of the product; and
 - (b) calculating and specifying the maximum eligibility points of an applicant based on those provisional start demands; and
 - (c) in relation to the lots of each product, other than:
 - (i) a 900 lower product; or
 - (ii) for a set-aside participant – a 900 upper product;either:
 - (iii) not selecting a provisional minimum spectrum requirement; or
 - (iv) selecting 2 lots as the provisional minimum spectrum requirement; for the lots of the product.
- (9) If the ACMA varies the eligibility deadline under subsection (3), then in this instrument:
- (a) a reference to the *eligibility deadline* is taken to be a reference to the varied eligibility deadline; and
 - (b) a reference to the *eligibility nomination form* is taken to be a reference to the varied eligibility nomination form; and
 - (c) a reference to a *completed eligibility nomination form* is taken to be a reference to a completed varied eligibility nomination form.

Division 4 Maximum eligibility points, provisional minimum spectrum requirements and securing eligibility points

41 Maximum eligibility points and 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 rating for the 850 major population product multiplied by the provisional start demand of the applicant for lots of that product; and
 - the lot rating for the 850 regional product multiplied by the provisional start demand of the applicant for lots of that product;
 - the lot rating for the 900 lower major population product multiplied by the provisional start demand of the applicant for lots of that product; and
 - the lot rating for the 900 lower regional product multiplied by the provisional start demand of the applicant for lots of that product; and
 - the lot rating for the 900 upper major population product multiplied by the provisional start demand of the applicant for lots of that product; and
 - the lot rating for the 900 upper regional product multiplied by the provisional start demand of the applicant for lots of that product.

Note: A person's ability to use eligibility points in the auction is restricted by the allocation limits in sections 13 and 14. See also section 7 of the spectrum licence limits direction.

- (2) If, in its completed eligibility nomination form, an applicant has not selected 2 lots as its provisional minimum spectrum requirement for the lots of a product, the applicant is taken to have no provisional minimum spectrum requirement for the lots of that product.

Note 1: 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.

Note 2: There is only 1 lot of each of the 900 lower products, and no provisional minimum spectrum requirement can be selected for these products.

Note 3: A set-aside participant may not select a provisional minimum spectrum requirement for a 900 upper product. See subsection 4(4).

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

- (1) An applicant must secure the applicant's maximum eligibility points specified in its eligibility nomination form or updated eligibility nomination form by:
- making a payment (**eligibility payment**) of the required amount to the ACMA; or
 - giving the ACMA a deed of financial security for the required amount; or
 - both:
 - making a payment (**eligibility payment**) for part of the required amount to the ACMA; and
 - giving the ACMA a deed of financial security for the remainder of the required amount.

Note 1: For information on how an eligibility payment is made, see section 10. For information on how a deed of financial security is given, see section 7 and subsections (9) and (10).

Note 2: An applicant must act in accordance with this subsection by the eligibility deadline or, if there is one, the extended eligibility deadline: see subsections 31(7) and 48(4).

- (2) In this section, the **required amount** for an applicant (when expressed in dollars) is 10% of the sum of, for each product, the amount calculated by multiplying:
- (a) the sum of:
 - (i) the provisional start demand of the applicant (when expressed in lots) for the product; and
 - (ii) if the applicant is a set-aside participant and the product is the 900 upper major population product – 1 set-aside lot of the 900 upper major population product; and
 - (iii) if the applicant is a set-aside participant and the product is the 900 upper regional product – 1 set-aside lot of the 900 upper regional product;
 - by:
 - (b) the starting price for the lots of the product.
- (3) If an applicant makes an eligibility payment or gives a deed of financial security, or both, for an amount (**the incomplete amount**) less than the required amount, 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 required amount; 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 a payment (**eligibility payment**) or give a deed of financial security, or both, for the remainder of the required amount.
- (4) If the applicant:
- (a) is not a set-aside participant; and
 - (b) does not comply with the notice given under subsection (3);
- then:
- (c) subject to paragraph (e), the maximum eligibility points secured by the applicant is calculated by:
 - (i) first, dividing the incomplete amount by the required amount; and
 - (ii) second, multiplying the quotient from subparagraph (i) by the maximum eligibility points specified by the applicant in its completed eligibility nomination form (or updated eligibility nomination form); and
 - (iii) third, rounding down the result from subparagraph (ii) to the nearest whole point, or zero if the result is less than one; and
 - (d) the provisional start demands of the applicant are reduced, commencing with a lot or lots of the product with the lowest lot rating being removed from the applicant's provisional start demand, 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 (c); and
 - (e) if, for the applicant, after the steps in paragraphs (c) and (d) 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) the applicant is a set-aside participant; and
 - (b) the applicant does not comply with the notice given under subsection (3); and

- (c) the incomplete amount is greater than 10% of the sum of:
 - (i) the starting price for lots of the 900 upper major population product; and
 - (ii) the starting price for lots of the 900 upper regional product;

then:

- (d) subject to paragraph (f), the maximum eligibility points secured by the applicant is calculated by:
 - (i) first, subtracting 10% of the sum of the starting price for lots of the 900 upper major population product and the starting price for lots of the 900 upper regional product from the required amount (***reduced required amount***); and
 - (ii) second, subtracting 10% of the sum of the starting price for lots of the 900 upper major population product and the starting price for lots of the 900 upper regional product from the incomplete amount (***reduced incomplete amount***); and
 - (iii) third, dividing the reduced incomplete amount by the reduced required amount; and
 - (iv) fourth, multiplying the quotient from subparagraph (iii) by the maximum eligibility points specified by the applicant in its completed eligibility nomination form (or updated eligibility nomination form); and
 - (v) fifth, rounding down the result from subparagraph (iv) to the nearest whole point, or zero if the result is less than one; and
- (e) the provisional start demands of the applicant are reduced, commencing with a lot or lots of the product with the lowest lot rating being removed from the applicant's provisional start demand, 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 (d); and
- (f) if, after the steps in paragraphs (d) and (e) 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.

(6) If:

- (a) the applicant is a set-aside participant; and
- (b) the applicant does not comply with the notice given under subsection (3); and
- (c) the incomplete amount is less than 10% of the sum of:
 - (i) the starting price for lots of the 900 upper major population product; and
 - (ii) the starting price for lots of the 900 upper regional product;

the applicant is not entitled to bid during the primary stage and the secondary stage.

(7) If:

- (a) as a result of paragraph (4)(c), (4)(e), (5)(d) or (5)(f) the applicant has zero maximum eligibility points; or
- (b) as a result of paragraph (4)(d) or (5)(e), the applicant has no provisional start demands;

then:

- (c) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
- (d) in any other case – the applicant is taken to have withdrawn its application.

- (8) The ACMA must:
- (a) if an applicant has had its maximum eligibility points and provisional start demands calculated in accordance with subsection (4) or (5) – enter the amounts calculated for the applicant in the register and tell the applicant in writing; or
 - (b) if a set-aside participant is not entitled to bid during the primary stage or secondary stage as a result of subsection (6) or paragraph (7)(c) – tell the set-aside participant in writing; or
 - (c) if an applicant is taken to have withdrawn its application under paragraph (7)(d) – tell the applicant in writing.
- (9) 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*.
- (10) 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.
- (11) If:
- (a) the ACMA is not satisfied that the person executing a deed of financial security, given to the ACMA by the applicant, is a person mentioned in subsection (9); or
 - (b) an applicant fails to comply with subsection (10);
- then:
- (c) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (d) in any other case – the applicant is taken to have withdrawn its application.
- (12) The ACMA must:
- (a) if a set-aside participant is not entitled to bid during the primary stage and the secondary stage as a result of paragraph (11)(c) – tell the set-aside participant in writing; or
 - (b) if an applicant is taken to have withdrawn its application under paragraph (11)(d) – tell the applicant in writing.
- (13) For paragraphs (4)(d) and (5)(e), if the lots of 2 or more products have the same lot rating, the ACMA may select the order in which the lots of those products are removed from the applicant’s provisional start demand.

Division 5 Changes to starting prices, and related matters

43 Varying starting prices, lot ratings and set-aside prices, and setting new deadlines

- (1) Not less than 5 working days before the eligibility deadline, the ACMA may:
- (a) vary a starting price set under paragraph 28(1)(a); and
 - (b) if a starting price is varied, vary a lot rating set under paragraph 28(1)(b); and
 - (c) if the starting price for a 900 upper product is varied, vary the set-aside price for set-aside lots of that product set under paragraph 28(1)(c).

Note: Varying a starting price or a set-aside price relates to Division 2 of Part 6 of this instrument for the purposes of section 294 of the Act. Accordingly, paragraphs 43(1)(a) and (c) are disallowable under section 42 of the *Legislation Act 2003*.

- (2) For the purposes of subsection (1)(c):
- (a) the set-aside price for set-aside lots of the 900 upper major population product must be:
 - (i) at least 120% of the starting price for the lots of the 900 upper major population product, as varied; and
 - (ii) not greater than 130% of the starting price for the lots of the 900 upper major population product, as varied;
 - (b) the set-aside price for set-aside lots of the 900 upper regional product must be:
 - (i) at least 120% of the starting price for the lots of the 900 upper regional product, as varied; and
 - (ii) not greater than 130% of the starting price for the lots of the 900 upper regional product, as varied.

Note: Subsection (2) 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*.

- (3) If the ACMA varies a starting price under paragraph (1)(a), the ACMA must:
- (a) set a time and date to replace the application deadline (***new application deadline***); and
 - (b) set a time and date to replace the eligibility deadline (***extended eligibility deadline***).
- (4) The new application deadline must be at least 20 working days after the day the ACMA varied the starting price.
- (5) The extended eligibility deadline must be at least 30 working days after the new application deadline.
- (6) If the ACMA varies a starting price under paragraph (1)(a), then after the new application deadline the ACMA must approve a form (***updated eligibility nomination form***) that complies with subsection (7).
- (7) The updated eligibility nomination form must include 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, at the starting price for the lots of the product; and
 - (b) calculating and specifying the maximum eligibility points of an applicant based on those provisional start demands; and
 - (c) in relation to the lots of each product, other than:
 - (i) a 900 lower product; or
 - (ii) for a set-aside participant – a 900 upper product;

either:

- (iii) not selecting a provisional minimum spectrum requirement; or
- (iv) selecting 2 lots as the provisional minimum spectrum requirement; for the lots of each product.

- (8) As soon as practicable after varying a starting price under paragraph (1)(a), the ACMA must publish on its website a notice setting out the following:
- (a) the details of the variation of the starting price;
 - (b) if a lot rating was varied – the details of the variation of the lot rating;
 - (c) if a set-aside price was varied – the details of the variation of the set-aside price;
 - (d) the date and time of the new application deadline;
 - (e) the date and time of the extended eligibility deadline.

44 Notice of updated documents

As soon as practicable after the ACMA sets the deadlines under subsection 43(3), the ACMA must notify all 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 either or both of the following:
 - (i) make an additional eligibility payment to the ACMA for the purposes of section 42;
 - (ii) give the ACMA an additional deed of financial security for the purposes of section 42;if necessary, as a result of the completed updated eligibility nomination form; and
- (c) they may, before the new application deadline, give the ACMA an application form to replace their application form.

45 Giving replacement application form

- (1) No later than the new application deadline, an applicant may give the ACMA an application form to replace its application form (***original application form***) given by the application deadline.

Note 1: If an applicant who validly gave the ACMA an original application form before the application deadline does not give the ACMA an application form under this subsection, and does not withdraw its application, its original application form continues to apply for the purposes of this instrument.

Note 2: A set-aside applicant may give the ACMA an application form under this subsection that contains a different election whether to take up set-aside lots, to that contained in its original application form.

- (2) If:
- (a) as a result of its original application form, a set-aside applicant is a set-aside participant; and
 - (b) in its completed application form given under subsection (1), the applicant states that it does not elect to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product;
- then, for the purposes of this instrument, the applicant ceases to be a ***set-aside participant*** from the new application deadline.

- (3) If:
- (a) as a result of its original application form, a set-aside applicant is not a set-aside participant; and
 - (b) in its completed application form given under subsection (1), the applicant states that it elects to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product;
- then, for the purposes of this instrument:
- (c) subsection 62(1), if it did not already apply, applies in relation to the auction; and
 - (d) the applicant is a *set-aside participant* from the new application deadline.

46 Updating eligibility nomination form and financial security

- (1) As soon as practicable after the new application deadline, the ACMA must:
- (a) give each applicant a copy of the updated eligibility nomination form; and
 - (b) if there is only one set-aside participant – tell each applicant the identity of that set-aside participant.
- (2) No later than the extended eligibility deadline, an applicant must give the ACMA a completed updated eligibility nomination form that:
- (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 those specified provisional start demands; and
 - (c) in relation to the lots of each product, other than:
 - (i) a 900 lower product; or
 - (ii) for a set-aside participant – a 900 upper product;states that the applicant either:
 - (iii) does not select a provisional minimum spectrum requirement; or
 - (iv) selects 2 lots as the provisional minimum spectrum requirement; for the lots of the product.
- (3) If an applicant fails to comply with subsection (2):
- (a) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – the applicant is taken to have withdrawn its application.
- (4) No later than the extended eligibility deadline, an applicant may do either or both of the following:
- (a) make an additional payment (*eligibility payment*) to the ACMA for the purposes of section 42;
 - (b) give the ACMA an additional deed of financial security for the purposes of section 42.

Note 1: If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount less than the required amount, as defined in subsection 42(2), see subsections 42(3) to 42(8).

Note 2: If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount more than the required amount, as defined in subsection 42(2), see subsection 73(2) or 74(2), or paragraph 77(1)(a), for the requirement to refund the whole or part of the eligibility payment. Otherwise, see subsection 75(2) in relation to calculating the balance of the winning price.

- (5) If a deed of financial security (for paragraph (4)(b)) is given to the ACMA 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).
- (6) If an applicant fails to comply with subsection (5):
 - (a) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – the applicant is taken to have withdrawn its application.
- (7) The ACMA must:
 - (a) if a set-aside participant is not entitled to bid during the primary stage and the secondary stage – tell the set-aside participant in writing; or
 - (b) if an applicant is taken to have withdrawn its application under paragraph (3)(b) or (6)(b) – tell the applicant in writing.

47 Notice inviting new applicants to the auction

- (1) As soon as practicable after the ACMA sets the deadlines under subsection 43(3), 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 new application deadline; and
 - (c) states the extended eligibility deadline; and
 - (d) states that applications may only be withdrawn before the extended eligibility deadline; and
 - (e) states that the applicant information package for the auction (with changes to the contents as a result of any decisions made by the ACMA under section 43) 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.

48 Making an application – new applicants to the auction

- (1) A person (*new applicant*) who:
 - (a) is not already an applicant; or
 - (b) was an applicant but withdrew, or was taken to have withdrawn, its application;may apply to become registered as a bidder in the auction by:
 - (c) giving the ACMA a completed application form; and
 - (d) giving the ACMA a deed of acknowledgement executed by the applicant; and
 - (e) giving the ACMA a deed of confidentiality executed by the applicant; and
 - (f) paying the application fee;before the new application deadline.

Note: For information on how an application fee must be paid, see section 10.

- (2) If one or more new applicants that are set-aside applicants give the ACMA a completed application form that, in each case, states that the set-aside applicant elects to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product:
- (a) subsection 62(1), if it did not already apply, applies in relation to the auction; and
 - (b) each of those applicants is a *set-aside participant*.
- (3) As soon as practicable after the new application deadline, the ACMA must:
- (a) give each new applicant a copy of the updated eligibility nomination form;
 - (b) if there is only one set-aside participant – tell each new applicant the identity of that set-aside participant.
- (4) After the new application deadline, and no later than the extended eligibility deadline, a new applicant must:
- (a) give the ACMA a completed updated eligibility nomination form, which:
 - (i) specifies the number of lots of each product desired by the new applicant as valid provisional start demands of the new 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 new applicant, based on those specified provisional start demands; and
 - (iii) in relation to the lots of each product, other than:
 - (A) a 900 lower product; or
 - (B) for a set-aside participant – a 900 upper product;states that the applicant either:
 - (C) does not select a provisional minimum spectrum requirement; or
 - (D) selects 2 lots as the provisional minimum spectrum requirement; for the lots of the product; and
 - (b) in accordance with section 42, do one of the following:
 - (i) make an eligibility payment to the ACMA; or
 - (ii) give the ACMA a deed of financial security; or
 - (iii) make an eligibility payment and give a deed of financial security to the ACMA.
- Note 1: If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount less than the required amount, as defined in subsection 42(2), see subsections 42(3) to 42(8).
- Note 2: If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount more than the required amount, as defined in subsection 42(2), see subsection 73(2) or 74(2), or paragraph 77(1)(a), for the requirement to refund the whole or part of the eligibility payment. Otherwise, see subsection 75(2) in relation to calculating the balance of the winning price.
- (5) If a new applicant fails to comply with subsection (4):
- (a) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – the new applicant is taken to have withdrawn its application.
- (6) A new applicant may give the ACMA an updated, additional or replacement document:
- (a) for a document mentioned in paragraph (1)(c), (1)(d) or (1)(e) – at any time until the new application deadline, but not after the new application deadline; or
 - (b) for a document mentioned in paragraph (4)(a) or (4)(b) – at any time until the extended eligibility deadline, but not after the extended eligibility deadline.

- (7) If a deed of financial security (for subparagraph (4)(b)(ii) or (iii)) is given to the ACMA 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).
- (8) If the new applicant fails to comply with subsection (7):
 - (a) for a set-aside participant – the set-aside participant is not entitled to bid during the primary stage and the secondary stage; or
 - (b) in any other case – the applicant is taken to have withdrawn its application.
- (9) The ACMA must:
 - (a) if a set-aside participant is not entitled to bid during the primary stage and the secondary stage – tell the set-aside participant in writing; or
 - (b) if an applicant is taken to have withdrawn its application under paragraph (5)(b) or (8)(b) – tell the applicant in writing.

49 Initial auction information provided to new applicants when starting prices changed

After the new application deadline, the ACMA must give each new applicant under section 48 the following:

- (a) information about using the auction system;
- (b) information about making entries in the auction system during the pre-bidding phase;
- (c) information about making bids in the auction system during the primary stage, secondary stage and assignment stage.

50 Statutory declarations and affiliations – where there are new applicants to the auction

- (1) If the ACMA receives an application from a new applicant in accordance with subsection 48(1), the ACMA must, after the new application deadline:
 - (a) give each applicant (including each new applicant) details about the identity of all other applicants, and the persons identified in applications as the associates of the other applicants; and
 - (b) ask each applicant (including each new 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 an applicant who has withdrawn its application.
- (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 (including a new applicant) does not give the ACMA a statutory declaration in accordance with this section, the applicant is taken to have withdrawn its application.

Note: If an applicant that is taken to have withdrawn its application under subsection (4) is a set-aside participant, see section 51, and paragraph 6(2)(c) of the spectrum licence limits direction.

- (5) If the ACMA is satisfied that two or more applicants are affiliated, the procedures in sections 37 and 38 apply.

Note: If an applicant that is a set-aside participant is taken to have withdrawn its application under section 37 or section 38, as they apply because of this subsection, see section 51, and paragraph 6(2)(c) of the spectrum licence limits direction.

- (6) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (4).

51 Changes to applicants as a result of this Division – effect on supply of 900 upper products

Application of section

- (1) If:
- (a) an applicant is a set-aside participant; and
 - (b) the applicant has withdrawn its application under section 52 or is taken to have withdrawn its application under:
 - (i) subsection 50(4); or
 - (ii) because of the result of subsection 50(5) – section 37 or section 38; and
 - (c) at the time the applicant withdraws, or is taken to have withdrawn, its application, the ACMA has set an extended eligibility deadline under paragraph 43(3)(b);
- this section applies.
- (2) If:
- (a) the ACMA receives an application under subsection 38(2); and
 - (b) the applicant is a set-aside participant; and
 - (c) at the time the ACMA receives the application, the ACMA has set an extended eligibility deadline under paragraph 43(3)(b);
- this section applies.
- (3) If:
- (a) the ACMA receives an application under subsection 48(1); and
 - (b) the applicant is a set-aside participant;
- this section applies.
- (4) If an applicant ceases to be a set-aside participant because of subsection 45(2), this section applies.
- (5) If an applicant becomes a set-aside participant because of subsection 45(3), this section applies.

Effect on supply of 900 upper products

- (6) If this section applies, the ACMA may vary the extended eligibility deadline (***varied extended eligibility deadline***).
- (7) The varied extended eligibility deadline must be later than:
- (a) if the ACMA makes its decision under subsection (6) before the extended eligibility deadline – the extended eligibility deadline; or
 - (b) if the ACMA makes its decision under subsection (6) after the extended eligibility deadline – the day on which the ACMA made its decision under subsection (6).
- (8) If, as a result of the operation of one or more of:
- (a) subsection 45(2); or
 - (b) section 50; or
 - (c) because of the result of subsection 50(5) – section 37 or section 38;

there is no applicant (other than a withdrawn applicant) who, in its completed application form, states that it elects to take up a set-aside lot, then from the last time a person ceases to be a set-aside participant:

- (d) subsection 62(1) ceases to apply in relation to the auction; and
- (e) subsection 62(2) applies in relation to the auction and
- (f) there are no *set-aside participants*.

- (9) If the ACMA varies the extended eligibility deadline under subsection (6), the ACMA must:
- (a) approve a form (*varied updated eligibility nomination form*) that complies with subsection (10); and
 - (b) tell each applicant, in writing, how many set-aside participants there are; and
 - (c) if there is only one set-aside participant – tell each applicant the identity of that set-aside participant;
 - (d) tell each applicant, in writing:
 - (i) the supply of the 900 upper major population product; and
 - (ii) the supply of the 900 upper regional product; and
 - (e) give each applicant a copy of the varied updated eligibility nomination form.

Note: For the 900 upper products, *supply* depends upon whether one or more set-aside applicants have elected to take up set-aside lots.

- (10) The varied updated eligibility nomination form must include 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, at the starting price for the lots of the product; and
 - (b) calculating and specifying the maximum eligibility points of an applicant based on those provisional start demands; and
 - (c) in relation to the lots of each product, other than:
 - (i) a 900 lower product; or
 - (ii) for a set-aside participant – a 900 upper product;either:
 - (iii) not selecting a provisional minimum spectrum requirement; or
 - (iv) selecting 2 lots as the provisional minimum spectrum requirement; for the lots of the product.
- (11) If the ACMA varies the extended eligibility deadline under subsection (6), then in this instrument:
- (a) a reference to the *extended eligibility deadline* is taken to be a reference to the varied extended eligibility deadline; and
 - (b) a reference to the *updated eligibility nomination form* is taken to be a reference to the varied updated eligibility nomination form; and
 - (c) a reference to a *completed updated eligibility nomination form* is taken to be a reference to a completed varied updated eligibility nomination form.

Division 6 Withdrawal of applications

52 Withdrawal of application

- (1) Subject to subsection (6), 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:
 - (a) an eligibility payment under subsection 31(7), 38(7) or 48(4), and in accordance with and for the purposes of section 42; or
 - (b) an additional eligibility payment under subsection 46(4), in accordance with and for the purposes of section 42;the ACMA must refund the eligibility payment or additional eligibility payment within the period specified in subsection 73(2).
- (3) Subsection (2) is subject to sections 85 and 87.
- (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 48(1), an applicant must not be re-admitted to the auction after withdrawing, or being taken to have withdrawn, its application.
- (6) A person who is a set-aside participant may only withdraw its application in accordance with subsection (1) if:
 - (a) the ACMA varies the starting price for lots of a product, in accordance with subsection 43(1); and
 - (b) the set-aside participant gives notice in writing of the withdrawal in the period:
 - (i) commencing at the time the ACMA notified the set-aside participant under section 44; and
 - (ii) ending immediately before the new application deadline.
- (7) If a person who is a set-aside participant withdraws its application in accordance with subsections (1) and (6):
 - (a) for the purposes of this instrument, the person ceases to be a *set-aside participant* from the time the person withdraws its application; and
 - (b) if, as a result of the withdrawal, there is no applicant (other than an applicant who has withdrawn, or is taken to have withdrawn, its application) that has stated, in its application, that it elects to take up a set-aside lot:
 - (i) subsection 62(1) ceases to apply in relation to the auction; and
 - (ii) subsection 62(2) applies in relation to the auction; and
 - (iii) there are no *set-aside participants*.

Note: As a result of the operation of this section, the *supply* of the 900 upper products may have changed, or may stay the same: see clause 2 of Schedule 2.

Division 7 Registration of bidders

53 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) whether the bidder is a set-aside participant;
 - (h) if the bidder is a set-aside participant – whether the bidder is entitled to bid in the primary stage and the secondary stage;
 - (i) the bidder’s maximum eligibility points;
 - (j) the bidder’s provisional minimum spectrum requirements (if any) for the lots of each product, other than the following:
 - (i) a 900 lower product;
 - (ii) if the bidder is a set-aside participant – a 900 upper product;
 - (k) the bidder’s allocation limits applicable to each of the following:
 - (i) the major population products;
 - (ii) the regional products;
 - (l) the bidder’s ABN, ACN or ARBN;
 - (m) the names of the bidder’s associates and the nature of each associate’s association with the bidder.
- (3) The ACMA may also include other information in the register, if the ACMA considers the information necessary or convenient for the auction.
- (4) If:
- (a) a bidder tells the ACMA of a change in the bidder’s name or contact information, including a change of information for the bidder’s contact person; or
 - (b) the ACMA becomes aware that any of the information on the register is not correct;
- the ACMA must change or correct the register as soon as practicable.
- (5) The ACMA must not change the matter in paragraph (2)(g).

Note: Once a set-aside applicant has stated, in its application form, that it elects to take up a set-aside lot of both of the 900 upper major population product and the 900 upper regional product, the applicant becomes a set-aside participant, and that status cannot be changed unless provided for by this instrument. The instrument does not provide for that status to be changed for a person at any time after the ACMA registers the person as a bidder under section 54.

54 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 31, section 38 or section 48, including replacing an application form under section 45, or updating, adding to or replacing a document in an application under another provision of this instrument; and
 - (ii) if the person is not a set-aside participant – made an eligibility payment (including an additional eligibility payment) or given the ACMA a deed of financial security (or both) under, or for the purposes of, section 42; and
 - (c) the person has not withdrawn, and is not taken to have withdrawn, its application; and
 - (d) if a deed of financial security has been given, and the person is not a set-aside participant – the ACMA is satisfied that the person who executed the deed is a person mentioned in subsection 42(9).

Note 1: For subparagraph (b)(ii), if a set-aside participant does not make an eligibility payment or give the ACMA a deed of financial security, the set-aside participant will not be entitled to bid during the primary stage and the secondary stage. See paragraphs 31(8)(a), 38(9)(a) and 48(5)(a).

Note 2: For paragraph (d), if, in relation to a set-aside participant, the ACMA is not satisfied that the person who executed a deed of financial security is a person mentioned in subsection 42(9), the set-aside participant will not be entitled to bid during the primary stage and the secondary stage. See subsection 42(11).

- (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) notice as to whether the bidder is a set-aside participant;
 - (d) information about accessing the auction system;
 - (e) 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.

55 Bidders to notify the 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) Subject to subsection (5), if the auction manager is satisfied that information on the register is incorrect, the auction manager may correct the register.
- (3) Examples of information that is incorrect for the purposes of subsection (2) are information that contains a clerical error, information that contains an obvious mistake, or information that contains an omission.
- (4) Subsection (3) does not limit subsection (2).
- (5) The auction manager must not change the matter in paragraph 53(2)(g).

Note: Once a set-aside applicant has stated, in its application form, that it elects to take up a set-aside lot of both of the 900 upper major population product and the 900 upper regional product, the applicant becomes a set-aside participant, and that status cannot be changed unless provided for by this instrument. The instrument does not provide for that status to be changed for a person at any time after the ACMA registers the person as a bidder under section 54.

Division 8 Preparation for bidding and scheduling rounds of the auction

56 Preparation for bidding

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

57 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, and not misused, during the auction period.
- (2) A 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.

58 Auction rounds

- (1) The rounds of the auction for the primary stage, secondary stage and assignment stage are to be scheduled in accordance with this instrument.

Note: The assignment stage also deals with the allocation of the downshift metropolitan lot and the downshift regional lot.

- (2) The first clock round of the primary stage starts on the date and time for that clock round set by the auction manager under paragraph 59(1)(a).

59 Pre-bidding phase and 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 clock round of the primary stage; and
 - (b) set a period of at least 3 hours that falls within the 48 hours before the start date and start time of the first clock round of the primary stage as the *pre-bidding phase*.
- (2) At least 10 working days before the start of the pre-bidding phase, the auction manager must notify each bidder of:
 - (a) the start date and start time, and duration, of the pre-bidding phase; and
 - (b) the start date and start time of the first clock round of the primary stage.

Part 5—Auction procedures, and allocation of set-aside lots

Division 1 Procedures to be applied for auction and allocation of set-aside lots

60 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:
 - (i) their provisional start demand for the lots of each product; and
 - (ii) for each product, other than:
 - (A) a 900 lower product; or
 - (B) for a set-aside participant – a 900 upper product;
 - (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 that 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 assignment bids; and
 - (b) the determination of the winning assignment bids (after an assignment round has ended), and of the total assignment price for each assignment winner after all assignment rounds are completed; and
 - (c) if subclause 10(1) of Schedule 4 applies – the allocation of the downshift metropolitan lot; and
 - (d) if subclause 10(2) of Schedule 4 applies – the allocation of the downshift regional lot.

61 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) in the primary stage – there will be a pre-bidding phase, in which the bidder may enter start demands, and one clock round 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 1: In this situation, the assignment prices will be zero: see subclause 8(2) of Schedule 4.

Note 2: The assignment stage also deals with the allocation of the downshift metropolitan lot and the downshift regional lot.

- (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.

62 Procedures in relation to set-aside lots

- (1) If this subsection applies in relation to the auction, Schedule 1 takes effect immediately before the pre-bidding phase of the primary stage.
- (2) If this subsection applies in relation to the auction, Schedule 1 does not have any effect.

63 Rounds of the auction

- (1) The clock rounds for the primary stage are to be conducted in accordance with the rules in Schedule 2.
- (2) The rounds for the secondary stage, if required, are to be conducted in accordance with the rules in Schedule 3.
- (3) In accordance with the rules in Schedule 4:
 - (a) the assignment rounds for the assignment stage are to be conducted; and
 - (b) the downshift metropolitan lot may be allocated; and
 - (c) the downshift regional lot may be allocated.

64 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; or
 - (b) a bid for a clock round in the primary stage, a round in the secondary stage, or in an assignment round;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; or
 - (b) a bid for a clock round in the primary stage, a round in the secondary stage, or in an assignment round;after the end time of the pre-bidding phase or relevant 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 relevant round because of technical or communication problems.
- (3) An entry or 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(9) of Schedule 2 for details of the information about the outcome of the pre-bidding phase that will be provided to bidders.

Note 2: See clause 8 of Schedule 2, clause 6 of Schedule 3, and clauses 7 and 8 of Schedule 4, for details of the information about the outcome of a round of the auction that will be provided to bidders.

65 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 one or more of the following:
 - (i) entries made in the pre-bidding phase;
 - (ii) the results of the round of the auction that last ended;
 - (iii) information received by a bidder after that round; or
 - (b) stop the pre-bidding phase, and restart the pre-bidding phase; or
 - (c) stop the current round, and restart the round; or
 - (d) cancel the results of one or more rounds, and restart the auction from the point before those rounds; or
 - (e) cancel the results of:
 - (i) all the clock rounds in the primary stage; or
 - (ii) all the rounds in the secondary stage; or
 - (iii) all the assignment rounds;and restart the auction from the first round of the relevant stage; or
 - (f) suspend the auction.
- (2) In this section, *exceptional circumstances* include the following:
 - (a) a significant technical difficulty with the auction system;
 - (b) a breach of the confidentiality obligation in section 19.
- (3) Subsection (2) does not limit what might constitute *exceptional circumstances*.
- (4) This section applies to the following:
 - (a) the pre-bidding phase;
 - (b) the clock rounds in the primary stage;
 - (c) the rounds in the secondary stage;
 - (d) the assignment rounds in the assignment stage.

Division 2 Affiliations during the auction

66 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 85. Section 85 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

67 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.

68 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.

69 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 67 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, secondary winners and set-aside participants about affiliations

70 Primary winners, secondary winners and set-aside participants to make statement about affiliations

- (1) If subsection 69(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:
 - (i) all other persons who are primary winners and secondary winners; and
 - (ii) each set-aside participant who is not also a primary winner or secondary winner; and
 - (b) give each set-aside participant who is not also a primary winner or secondary winner details about the identity of:
 - (i) all primary winners and secondary winners; and
 - (ii) each other set-aside participant who is not also a primary winner or secondary winner; and
 - (c) ask each primary winner and secondary winner to make a statement whether the winner is an affiliate of another person who is a primary winner or secondary winner, or a set-aside participant who is not also a primary winner or secondary winner, and, if so, identifying the other winner or set-aside participant and giving details of the affiliation; and
 - (d) ask each set-aside participant who is not also a primary winner or secondary winner to make a statement whether the set-aside participant is an affiliate of a primary winner or secondary winner, or another set-aside participant who is not also a primary winner or secondary winner, and, if so, identifying the primary winner, secondary winner or other set-aside participant 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.

- (4) A set-aside participant who is not also 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*.

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

71 Notification of affiliation

- (1) If the ACMA is satisfied that 2 or more primary winners or secondary winners were affiliated before 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.
- (2) If the ACMA is satisfied that 2 or more set-aside participants who are not also primary winners or secondary winners were affiliated before 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 set-aside participants and tell them the basis on which the ACMA is satisfied the set-aside participants are affiliated.
- (3) If the ACMA is satisfied that one or more primary winners or secondary winners were affiliated with one or more set-aside participants who are not also primary winners or secondary winners before 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 each person so affiliated and tell them the basis on which the ACMA is satisfied they are affiliated.

72 Consequence of affiliation

- (1) If the ACMA notifies 2 or more persons under section 71 (*affiliated persons*), the ACMA must not allocate spectrum licences to the affiliated persons that would exceed the allocation limits.
- (2) If the allocation of spectrum licences to the affiliated persons for either, or both:
- (a) the sum of:
 - (i) all the lots of each major population product (when expressed in MHz) those persons were allocated in the primary stage or secondary stage; and
 - (ii) for each affiliated person that is a set-aside participant – 1 set-aside lot of the 900 upper major population product (when expressed in MHz); or
 - (b) the sum of:
 - (i) all the lots of each regional product (when expressed in MHz) those persons were allocated in the primary stage or secondary stage; and
 - (ii) for each affiliated person that is a set-aside participant – 1 set-aside lot of the 900 upper regional product (when expressed in MHz);
- would exceed the allocation limits, the affiliated persons may give a direction in writing to the ACMA specifying how lots are to be allocated between those persons up to the allocation limits.
- (3) The direction must be given:
- (a) jointly by the affiliated persons; and
 - (b) to the ACMA within 5 working days after those persons received notification under section 71.
- (4) If an affiliated person is a set-aside participant, the direction must not affect the allocation of any set-aside lots to the participant.

- (5) If the ACMA receives a direction that complies with subsections (2) to (4), lots are allocated to the affiliated persons in accordance with the direction.
- (6) If the ACMA does not receive a direction that complies with subsections (2) to (4), the ACMA may, for any part of the spectrum where the lots of one or more products allocated to the affiliated persons exceed the allocation limits, at its discretion allocate lots of one or more of those products to each person up to those allocation limits, subject to subsection (7).
- (7) If an affiliated person is a set-aside participant, the ACMA's decision under subsection (6) must not affect the allocation of any set-aside lots to the participant.
- (8) Spectrum in excess of the allocation limits that is not allocated under subsection (5) or (6) is taken to be unallocated.
- (9) A winning bidder must pay the full balance of the winning price:
 - (a) calculated in relation to all lots for which the winning bidder was the primary winner or secondary winner, despite not being allocated all those lots as a result of this section; and
 - (b) if the winning bidder is a set-aside participant – calculated in relation to each set-aside lot allocated to the participant; and
 - (c) for all frequency ranges assigned to:
 - (i) any lots which were allocated to the winning bidder as a result of this section; and
 - (ii) if the winning bidder is a set-aside participant – each set-aside lot allocated under Schedule 1.

Note: See section 7 of the spectrum licence limits direction.

Part 6—Procedures after auction

Division 1 Notices and refunds to withdrawn applicants and unsuccessful bidders

73 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 19 has ended.
- (2) If an applicant that withdrew, or was taken to have withdrawn, its application made an eligibility payment, the ACMA must refund the eligibility payment no later than 6 months after giving the notice under subsection (1).
- (3) Subsection (2) does not apply if the ACMA has made a decision to retain the eligibility payment under section 85.

Note: Section 85 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

74 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 (*unsuccessful bidder*) that:
 - (a) the bidder was unsuccessful in the auction; and
 - (b) the bidder's confidentiality obligation under section 19 will end when the ACMA announces or publishes the information mentioned in subsection 79(1).
- (2) If an unsuccessful bidder made an eligibility payment, the ACMA must refund the eligibility payment no later than 6 months after giving the notice under subsection (1).
- (3) Subsection (2) does not apply if the ACMA has made a decision to retain the eligibility payment under section 85.

Note: Section 85 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*.

75 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 for all lots allocated to the bidder in the secondary stage (if there is one); and
 - (c) for a bidder that is a set-aside participant – the set-aside price for each set-aside lot allocated to the bidder; and
 - (d) 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 42.

76 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:
- the number of lots of each product allocated to the winning bidder (including any set-aside lots allocated under Schedule 1); and
 - the frequency ranges assigned to the lots allocated; and
 - whether the winning bidder was allocated the downshift metropolitan lot or the downshift regional lot under Schedule 4; and
 - the winning price to be paid by the winning bidder.

Note 1: 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, or allocated to a set-aside participant under Schedule 1) at the end of the assignment stage.

Note 2: However, spectrum in a spectrum licence may be taken to be unallocated in some circumstances: see sections 85 and 86, and clause 5 of Schedule 5.

- (2) After the winning bidders and winning prices are determined, the auction manager must tell all bidders in writing:
- the names of all winning bidders; and
 - the frequency ranges in relation to the lots allocated under this instrument (including any set-aside lots allocated under Schedule 1); and
 - the winning price paid, or to be paid, by each winning bidder; and
 - the posted price for the lots of each product in the final clock round.
- (3) Unless all bidders agree in writing, the ACMA must not provide to all bidders any further information regarding the results of the auction other than that mentioned in subsection (2), and in subclause 18(2) of Schedule 2, unless required by law.

Note: For information about the auction that is announced or published after the end of the auction period, see subsection 79(1).

- (4) In this section, **final clock round** and **posted price** each has the meaning given by subclause 2(1) of Schedule 2.

77 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:
- the ACMA must refund the eligibility payment in excess of the winning price no later than 6 months after giving the notice under subsection 76(1); and
 - the bidder is entitled to be issued:
 - a spectrum licence for each part of the spectrum assigned to the lots, other than the downshift metropolitan lot and the downshift regional lot, allocated to the bidder; and
 - if the bidder was allocated the downshift metropolitan lot – a spectrum licence for the downshift metropolitan lot; and
 - if the bidder was allocated the downshift regional lot – a spectrum licence for the downshift regional lot;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) a spectrum licence for each part of the spectrum assigned to the lots, other than the downshift metropolitan lot and the downshift regional lot, allocated to the bidder; and
 - (b) if the bidder was allocated the downshift metropolitan lot – a spectrum licence for the downshift metropolitan lot; and
 - (c) if the bidder was allocated the downshift regional lot – a spectrum licence for the downshift regional lot;

without further payment.

Note: In accordance with the marketing plan, a spectrum licence for the downshift metropolitan lot, and a spectrum licence for the downshift regional lot, will be issued to the relevant winning bidder as a separate spectrum licence to any other spectrum licence issued to that winning bidder as a result of this instrument.

- (3) Subsections (1) and (2) do not apply if the ACMA has made a decision to retain the eligibility payment under section 85.

Note: Section 85 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

78 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 in accordance with Schedule 5.

79 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 the winning bidders;
 - (b) the spectrum allocated to each winning bidder;
 - (c) the winning price paid, or to be paid, by each winning bidder;
 - (d) the posted price of the lots of each product in the final clock round.
- (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 19 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, unless required by law.
- (4) In this section, **final clock round** and **posted price** each have the meaning given by subclause 2(1) of Schedule 2.

Part 7—Miscellaneous

80 Unallocated spectrum

Parts of the spectrum that are available in the auction but not allocated under Schedule 1, or in the primary stage or secondary stage (if any), or taken to be unallocated under section 72 or 86, or under clause 11 of Schedule 4, or not allocated as a result of clause 5 of Schedule 5, 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 auctions or by other procedures.

81 Applicants and bidders must not misuse auction system

- (1) An applicant or bidder must only access and use the auction system in accordance with the information about access and use provided under section 32, section 39, section 49 or paragraph 54(2)(d) or (e).
- (2) An applicant or bidder must not attempt to interfere with, disrupt or damage the auction system.
- (3) An applicant or bidder must not use or attempt to use the auction system to breach a law of the Commonwealth.

82 The 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 and form 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 85.

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

83 Use of information and documents by the 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; or
 - (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 ACMA Act or as otherwise authorised by law.

84 The ACMA to provide information to ACCC on request

- (1) The ACCC may request information from the ACMA 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;
 - (b) completed updated application forms;
 - (c) completed eligibility nomination forms;
 - (d) completed updated eligibility nomination forms;
 - (e) deeds of confidentiality;
 - (f) information about an applicant's associates and affiliations (including statutory declarations and statements made under this instrument);
 - (g) information about any breaches of confidentiality obligations;
 - (h) information about bidding during the auction;
 - (i) information about whether a set-aside applicant is a set-aside participant;
 - (j) information about the outcomes of the procedures in Part 6.

85 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 19 before the confidentiality obligation came to an end; or
 - (c) the ACMA is satisfied that the bidder breached section 66; or
 - (d) the bidder is a primary winner, secondary winner or set-aside participant who failed to give the statement, if required, under section 70; or
 - (e) the bidder is a winning bidder who failed to pay the balance of the winning price in accordance with Schedule 5; or
 - (f) the applicant or bidder failed to comply with a requirement in a notice given under subsection 82(1).

Note: A set-aside participant is a winning bidder.

- (2) The ACMA must, in writing, notify the applicant or bidder of a decision under subsection (1), and the nature of the breach of failure, before the later of:
 - (a) 6 months after the end of the auction period; or
 - (b) 6 months after the day on which the breach or failure mentioned in subsection (1) occurred, or first 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 87.

86 Effect of retention on winning bidders

If the ACMA makes a decision under subsection 85(1) in relation to a winning bidder:

- (a) despite section 77 and clause 4 of Schedule 5, the ACMA must not issue a spectrum licence to the bidder; and
- (b) the following parts of the spectrum are taken to be unallocated:
 - (i) the spectrum assigned to the lots allocated to the bidder at auction; and
 - (ii) if the downshift metropolitan lot was allocated to the bidder— both the following parts of the spectrum in the downshift metropolitan area:
 - (A) 824 MHz to 825 MHz;
 - (B) 869 MHz to 870 MHz; and
 - (iii) if the downshift regional lot was allocated to the bidder – both the following parts of the spectrum in the downshift regional area:
 - (A) 824 MHz to 825 MHz;
 - (B) 869 MHz to 870 MHz.

Note: A set-aside participant is a winning bidder.

87 Application to Federal Court for return of retained amount

- (1) An applicant or bidder who has been notified by the ACMA under subsection 85(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 (*relevant amount*).
- (2) On application, the Federal Court may:
 - (a) if the Court is not satisfied that the breach identified in the notice was committed – order the return of all of the relevant amount; or
 - (b) if the Court is satisfied that the breach identified in the notice was committed, but considers that it would be disproportionate for the Commonwealth to keep the relevant amount – order the return of part of the relevant amount.
- (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.

88 No liability of the ACMA, etc

None of the ACMA, the Commonwealth or 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.

89 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.

90 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 ACMA Act; 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—Allocation of set-aside lots for set-aside prices

(subsections 4(1), 62(1) and (2), paragraph 72(9)(b), subparagraph 72(9)(c)(ii), subsections 76(1) and (2), section 80)

1 Application of Schedule

This Schedule applies if subsection 62(1) applies in relation to the auction.

2 Allocation of set-aside lots

If subsection 62(1) applies in relation to the auction, immediately before the pre-bidding phase of the primary stage, each set-aside participant is allocated

- (a) one lot of the 900 upper major population product; and
- (b) one lot of the 900 upper regional product;

(each a *set-aside lot*).

Note 1: In accordance with section 75 of this instrument, the winning price for a set-aside participant will include:

- (a) the set-aside price for the set-aside lot of the 900 upper major population product; and
- (b) the set-aside price for the set-aside lot of the 900 upper regional product.

The set-aside price for each lot is set under section 28 of this instrument.

Note 2: This Schedule is included because of section 6 of the spectrum licence limits direction.

Note 3: The maximum number of set-aside lots that can be allocated by this clause is 4 (a maximum of 2 lots of the 900 upper major population product, and a maximum of 2 lots of the 900 upper regional product).

Schedule 2—Rules for the primary stage of the auction

(subsections 4(1) and (3), 63(1), 76(3) and (4), and 79(4))

Part 1 Application and interpretation

1 Application of Schedule

- (1) If subsection 62(2) applies in relation to the auction, this Schedule applies to all lots of each product, and each such lot is available in the primary stage of the auction.
- (2) If subsection 62(1) applies in relation to the auction, this Schedule applies to:
 - (a) all lots of the 850 major population product; and
 - (b) all lots of the 850 regional product; and
 - (c) the lot of the 900 lower major population product; and
 - (d) the lot of the 900 lower regional product;
 - (e) the supply of lots for the 900 upper major population product; and
 - (f) the supply of lots for the 900 upper regional product; andand each such lot is available in the primary stage of the auction.

Note: The supply of lots for the 900 upper major population product and the 900 upper regional product will not change after persons are registered as bidders under section 54.

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:

- (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 paragraph 3(3)(a) or subclause 3(5); or
- (b) for any clock round other than the first clock round – the total of the posted demands of all bidders for the lots of the product.

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 product multiplied by that opening price;

rounded up to the next thousand.

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

Note 2: The aggregate demand for lots of a product has a different definition for the first clock round, than for every other clock round.

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 request is made – 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 relevant clock round.

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

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

Note: For starting prices, see paragraph 28(1)(a) and 43(1)(a).

posted demand, of 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; or
- (b) for a bidder who requested a maintain bid for the lots of the product in the clock round – the start demand of the bidder for the lots of the product for that clock round.

Note: For the number of lots of the product determined by the processing algorithm, see clauses 2B and 2C.

posted price, for lots 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;

for the lot.

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

processing algorithm: see clause 2A.

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

- (a) for the first clock round – the number of lots of the product recorded in the auction system for the bidder under paragraph 3(3)(a) or subclause 3(5); 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 means:

- (a) for the 850 major population product – 2 lots; or
- (b) for the 850 regional product – 2 lots; or
- (c) for the 900 lower major population product – 1 lot; or
- (d) for the 900 lower regional product – 1 lot; or
- (e) for the 900 upper major population product and the 900 upper regional product – see subclauses (2) and (3).

(2) If subsection 62(1) applies in relation to the auction, **supply** means:

- (a) for the 900 upper major population product – the difference (in lots) between:
 - (i) 4; and
 - (ii) the number of set-aside lots of the 900 upper major population product allocated under Schedule 1; or
- (b) for the 900 upper regional product – the difference (in lots) between:
 - (i) 4; and
 - (ii) the number of set-aside lots of the 900 upper regional product allocated under Schedule 1.

(3) If subsection 62(2) applies in relation to the auction, **supply**, for each of the 900 upper products, means 4 lots.

Note: The number of set-aside participants, and the number of set-aside lots that will be allocated under Schedule 1, will not change after persons are registered as bidders under section 54.

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

(5) 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 the 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, and 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 first bid in the queue to determine if it is to be:
 - (a) applied in full, in which case go to Step 5b; or
 - (b) applied in part, in which case go to Step 5c; or
 - (c) rejected, in which case go to Step 5d.
 - 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 processes the next bid in the queue to determine if it is to be:
 - (a) applied in full, in which case go to Step 5b; or
 - (b) applied in part, in which case go to Step 5c; or
 - (c) rejected, in which case this Step 5d is recursive.
 - Step 6: stops processing bids if:
 - (a) a bid is rejected and there is no next bid in the queue; or
 - (b) there is no bid remaining in the queue.
 - Step 7: determines:
 - (a) the posted price for the lots of each product for the clock round in accordance with subclause (6); and
 - (b) the posted demand of each bidder for the lots of each product for the clock round in accordance with paragraph 2B(12)(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; and
 - (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; and
 - (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 the next bid in the queue that is rejected includes a reference to a bid 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 for the lots of the product is greater than zero – the posted price is the clock price for the clock round;
 - (b) if the excess demand for the lots of the product is not greater than zero – the posted price is:
 - (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

Available activity

- (1) In this clause, the **available activity** (in eligibility points) of a bidder, immediately before an increase bid is to be processed (**the relevant bid**), 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 of each product in each decrease bid that has already been applied in full or in part, before the relevant bid is processed; and
 - (ii) the sum of the lot ratings of each product in each increase bid that has already been applied in full or in part, before the relevant bid is processed.

Increase bid applied in full

- (2) Subject to subclauses (4), (5), (6), (7), (8) and (10), if, immediately before an increase bid is processed, the available activity (in eligibility points) 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** of a bidder for lots of a product, 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 of the increase bid of the product in the bid that is being processed.

Increase bid applied in part

- (3) Subject to subclauses (4), (5), (6), (7) and (10), if, immediately before an increase bid is processed, the available activity (in eligibility points) 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** of a bidder for lots of a product 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. When processed, the remainder of the increase bid will either be applied in full, applied in part, or rejected.

Increase bid applied in part – adjustment for allocation limits

- (4) Subject to subclause (10), if:
 - (a) a bidder is not a set-aside participant; and
 - (b) the bid is for lots of a major population product; and
 - (c) but for the operation of this subclause, the provisional posted demand for lots of a product of the 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) for major population products;the **provisional posted demand** of the bidder for the lots of the product is reduced by the number of lots necessary to ensure the provisional posted demand does not exceed the bidder's allocation limits (when expressed in number of lots) for major population products.

Note 1: See section 7 of the spectrum licence limits direction.

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

- (5) Subject to subclause (10), if:
 - (a) a bidder is not a set-aside participant; and
 - (b) the bid is for lots of a regional product; and
 - (c) but for the operation of this subclause, the provisional posted demand for lots of a product of the 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) for regional products;

the **provisional posted demand** of the bidder for the lots of the product is reduced by the number of lots necessary to ensure the provisional posted demand does not exceed the bidder's allocation limits (when expressed in number of lots) for regional products.

Note 1: See section 7 of the spectrum licence limits direction.

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

- (6) Subject to subclause (10), if:
- (a) a bidder is a set-aside participant; and
 - (b) the bid is a bid for lots of a major population product; and
 - (c) but for the operation of this subclause, the sum of:
 - (i) the provisional posted demand for lots of a product of the bidder calculated in accordance with either subclause (2) or (3), whichever is the case; and
 - (ii) 1 set-aside lot of the 900 upper major population product;**(relevant number of lots)** would have caused the bidder to exceed the bidder's allocation limits (when expressed in number of lots) for major population products;

the **provisional posted demand** of the bidder for the lots of the product is reduced by the number of lots necessary to ensure the relevant number of lots does not exceed the bidder's allocation limits (when expressed in number of lots) for major population products.

Note 1: See section 7 of the spectrum licence limits direction.

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

- (7) Subject to subclause (10), if:
- (a) a bidder is a set-aside participant; and
 - (b) the bid is a bid for lots of a regional product; and
 - (c) but for the operation of this subclause, the sum of:
 - (i) the provisional posted demand for lots of a product of the bidder calculated in accordance with either subclause (2) or (3), whichever is the case; and
 - (ii) 1 set-aside lot of the 900 upper regional product;**(relevant number of lots)** would have caused the bidder to exceed the bidder's allocation limits (when expressed in number of lots) for regional products;

the **provisional posted demand** of the bidder for the lots of the product is reduced by the number of lots necessary to ensure the relevant number of lots does not exceed the bidder's allocation limits (when expressed in number of lots) for regional products.

Note 1: See section 7 of the spectrum licence limits direction.

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

- (8) Subject to subclause (11), if, for the purposes of paragraph (4)(c), (5)(c), (6)(c) or (7)(c), the provisional posted demand for lots of a product of the bidder was calculated in accordance with subclause (2), then despite subclause (2), the bid is applied in part.

Increase bid rejected

- (9) If, immediately before an increase bid in relation to lots of a product is processed (**relevant bid**), the quotient, when expressed in number of lots, of:
- (a) the available activity (in eligibility points); and
 - (b) the lot rating for the lot of the product;
- is less than one, the relevant bid is rejected.

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

- (10) If:
- (a) a minimum spectrum requirement has been selected for the lots of the product by the bidder; and
 - (b) but for the effect of this subclause, one of subclause (2), (3), (4), (5), (6) or (7) applies and the provisional posted demand calculated in accordance with the relevant subclause 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.
- (11) If the effect of subclause (4), (5), (6) or (7) is that the provisional posted demand of a bidder for the lots of a product is reduced to zero, then, despite subclauses (2) and (8), the increase bid is rejected.

Calculating posted demand and eligibility points

- (12) 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

Provisional excess demand

- (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.

Decrease bid applied in full

- (2) If, immediately before a decrease bid is processed, the provisional excess demand is equal to or greater than zero, the decrease bid is applied in full, such that the **provisional posted demand** for lots of the 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.
- (3) If:
- (a) a minimum spectrum requirement of 2 lots has been selected for the lots of the product by the bidder; and

- (b) but for the effect of this subclause, subclause (4) applies and the provisional posted demand calculated in accordance with subclause (4) would have been one lot of the product;

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

Decrease bid applied in part

- (4) Subject to subclause (3), if, immediately before a decrease bid is processed:

- (a) the provisional excess demand is less than zero; and
- (b) 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 the 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:
 - (i) the number of lots for the decrease bid of the product that is to be processed; and
 - (ii) 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. When processed, the remainder of the decrease bid will either be applied in full, applied in part, or rejected.

Decrease bid rejected

- (5) If, immediately before a decrease bid is processed:

- (a) the provisional excess demand is less than zero; and
- (b) 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.

Calculating posted demand and eligibility points

- (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 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 the first clock round – pre-bidding phase

Start demands

- (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, as recorded in the register; and
 - (b) provisional minimum spectrum requirements (if any) for the lots of each product, as recorded in the register; and
 - (c) allocation limits, as recorded in the register, applicable to the major population products; and
 - (d) allocation limits, as recorded in the register, applicable to the regional products.
- (2) If a set-aside participant is not entitled to bid during the primary stage and the secondary stage:
 - (a) that set-aside participant's provisional start demands for the lots of each product is zero; and
 - (b) the bidder has no provisional minimum spectrum requirement for the lots of each product; and
 - (c) subsection (3) does not apply in relation to that set-aside participant.

Note: If a set-aside participant fails to comply with particular requirements in this instrument, they may not be entitled to bid during the primary stage and the secondary stage.

- (3) During the pre-bidding phase, a bidder may, using the auction system:
 - (a) enter the bidder's valid **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) for the lots of each product (other than a 900 lower product), by:
 - (i) for the 850 major population product or the 850 regional product – entering 2 lots as the minimum spectrum requirement, or removing the provisional minimum spectrum requirement; or
 - (ii) for the 900 upper major population product, if the bidder is not a set-aside participant – entering 2 lots as the minimum spectrum requirement, or removing the provisional minimum spectrum requirement; or
 - (iii) for the 900 upper regional product, if the bidder is not a set-aside participant – entering 2 lots as the minimum spectrum requirement, or removing the provisional minimum spectrum requirement.

Note: A bidder may also be taken to make an entry in the circumstances specified in section 64.

- (4) A change or a confirmation made under subclause (3) does not have effect until the end of the pre-bidding phase.

Note: Subclause (3) allows a bidder to change a provisional start demand for lots of a product, or provisional minimum spectrum requirement for lots of a product, more than once during the pre-bidding phase. The start demand for lots of a product that is in the system at the end of the pre-bidding phase will be the bidder's start demand for lots of that product for the first clock round. The minimum spectrum requirement for lots of a product that is in the system at the end of the pre-bidding phase will be the bidder's minimum spectrum requirement for the lots of that product for the primary stage.

- (5) If a bidder does not change or confirm the bidder's provisional start demands for the lots of a product for the first clock round under subsection (3), the bidder's provisional start demand for the lots of the product, as recorded in the register, is the bidder's **start demand** for the lots of the product for the first clock round.
- (6) If a bidder does not act under paragraph (3)(b), the bidder's provisional minimum spectrum requirement (if any) for the lots of the product, as recorded in the register, is the bidder's minimum spectrum requirement for the lots of the product.

Start demand validity rules – pre-bidding phase

- (7) For the purposes of paragraph (3)(a), a start demand of a bidder for lots of a product is valid if all of the following apply in relation to the start demand:
- (a) if the product is a major population product – the total size of the sum of:
- (i) the start demand for the lots of the product; and
 - (ii) the start demand for lots of each other major population product; and
 - (iv) if the bidder is a set-aside participant – 1 set-aside lot of the 900 upper major population product;
- does not exceed the bidder's allocation limits (when expressed in MHz) applicable to the major population products;
- (b) if the product is a regional product – the total size of the sum of:
- (i) the start demand for the lots of the product; and
 - (ii) the start demand for lots of each other regional product; and
 - (iii) if the bidder is a set-aside participant – 1 set-aside lot of the 900 upper regional product;
- does not exceed the bidder's allocation limits (when expressed in MHz) applicable to the regional products;
- (c) 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 1: See section 7 of the spectrum licence limits direction.

Note 2: For the 900 upper products, **supply** depends upon whether one or more set-aside applicants have elected to take up set-aside lots.

- (8) For the purposes of paragraph (3)(a), a start demand of a bidder for lots of a product is valid if the initial eligibility points for all start demands of the bidder for lots of any product, as recorded in the auction system (whether changed or confirmed under paragraph (3)(a) or taken to be entered under subclause (5)) is less than or equal to the maximum eligibility points of the bidder.

Note: Any attempt by a bidder to change a provisional start demand for lots of a product under paragraph (3)(a) will not be permitted if it would increase the initial eligibility points of the bidder above the maximum eligibility points of the bidder.

After the end of the pre-bidding phase

- (9) 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 start demand for the lots of each product for the first clock round;
 - (b) the bidder's minimum spectrum requirement (if any) for the lots of each product;
 - (c) the bidder's initial eligibility points.

Interpretation

- (10) In this clause, **initial eligibility points** has the meaning given by paragraph 12(1)(a) of this Schedule.

4 Setting bid increment percentage and eligibility requirement percentage

Bid increment percentage

- (1) Before the first clock round, the auction manager must set a percentage (***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 each bidder of the bid increment percentage for the lots of each product.
- (3) The bid increment percentage:
 - (a) may be different for different products; and
 - (b) may be different for the same product for different clock rounds.

Eligibility requirement percentage

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

5 Schedule for clock rounds

- (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 auction manager must prepare an anticipated schedule for the clock rounds between those times.
- (3) There is no maximum or minimum length for a clock round, and no maximum or minimum length for the interval between two clock rounds.
- (4) There is no upper or lower limit on the number of clock rounds per day.
- (5) Subject to section 59, 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 working day to be a ***recess day*** on which there will be no clock rounds.
- (2) Before declaring a recess day, the auction manager must:
 - (a) give bidders an opportunity to comment on the proposed declaration; and
 - (b) take into account any comments received.

- (3) If the auction manager decides to declare a working day to be a recess day, the auction manager must tell each bidder in writing.

7 Clock rounds

- (1) Each lot of a product to which this Schedule applies is available for bidding:
 - (a) in the first clock round; and
 - (b) in each subsequent clock round until the final clock round.

Note: Bidding does not close on a single product – all products close together in the final clock round. The clock price, for lots 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; not all bidders may be able to make a bid on lots of a product during 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 that product;
 - (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 changing the bid increment percentage for the lots of a product, the auction manager must:
 - (a) tell each bidder in writing of the proposed change; and

- (b) give each bidder an opportunity to comment on the proposed change within the time (not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received within that time.
- (3) If the auction manager decides to change the bid increment percentage for the lots of a product, 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 65.

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 changing the eligibility requirement percentage, the auction manager must:
- (a) tell each bidder in writing of the proposed change; and
 - (b) give each bidder an opportunity to comment on the proposed change within the time (not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received within that time.
- (3) If the auction manager decides to change the eligibility requirement percentage, 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 for a clock round, means the figure obtained by multiplying:
- (a) the amount of the bidder's eligibility points for that clock round; by
 - (b) the eligibility requirement percentage applicable 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's posted demand for the lots of the product, after the end time of a clock round, is greater than zero.

12 Eligibility points

- (1) For a clock round, a bidder's **eligibility points** are:
- (a) for the first clock round – 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(3)(a) or subclause 3(5) (**initial eligibility points**); or
 - (b) for any other clock round – the lesser of:
 - (i) the bidder's eligibility points in the previous clock round; and
 - (ii) 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 a clock round in such a way that:
- the total value of the lots of each product, in eligibility points, for all the start demands of the bidder; plus
 - the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder; minus
 - the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;
- is greater than the bidder's eligibility points for that clock round.

13 Reduction in eligibility points

- (1) If a bidder does not meet its activity target for a clock round (the *current clock round*), the bidder's eligibility points for the following clock round (the *next clock round*) are calculated in accordance subclause (2).

Note: The application of subclause (2) always results in a reduction in eligibility points. There is nothing the bidder can do once the primary stage of the auction is under way to recover eligibility points.

- (2) For subclause (1), the bidder's eligibility points for the next clock round are calculated by the following formula:

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

rounded up to the nearest integer;

where:

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

R is the greater of:

- the total value of the lots, in eligibility points, on which the bidder was active in the current clock round; or
- the result, in eligibility points, of:
 - the total value of the lots of each product, in eligibility points, for all the start demands of the bidder; plus
 - the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder; minus
 - the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;
 for the current clock round.

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

Example: A bidder's eligibility points at the start of a clock round is 20,000. The eligibility percentage requirement that applies in 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 all of its posted demands, so eligibility points will be reduced for the next clock round as a result of under-activity.

The bidder's eligibility points for the next clock round (**E**) is its current activity (**R** = 10,000) divided by the eligibility requirement percentage (**P** = 60% or 0.6) that applied in the current clock round, which is 16,667 eligibility points.

14 Clock round bids

- (1) A bidder, other than a bidder to which subclause (2) applies, is entitled to bid in a clock round if the bidder's eligibility points for the clock round are greater than zero.

- (2) If a set-aside participant is not entitled to bid during the primary stage and the secondary stage, that set-aside participant is not entitled to bid in any clock round.
- (3) A bidder may not make more than one bid for the lots of each product in each clock round.
- (4) Except where subsection 64(1) or 64(2) applies, a bidder's bid in a clock round is taken to have been made when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 64(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 64(2) allows the auction manager to permit a bid to be made after a clock round has ended, in certain circumstances.

- (5) 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 performed by the auction system. The bid for the lots of a product that is 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 as permitted by section 64.

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 64(2) applies, the bid is received by the auction system between the start time and the end time of the clock round;
 - (b) for an increase bid or a decrease bid for lots of a product – the bid price is:
 - (i) not less than the opening price; and
 - (ii) not greater than the clock price;for the lots of the product for the clock round;
 - (c) for an increase bid or a decrease bid – the bid price is a multiple of 1,000;
 - (d) for an increase bid for lots of a major population product – the result (when expressed in MHz) of:
 - (i) the sum of the total size of the lots of each major population product for the start demand of the bidder; plus
 - (ii) the total size of the lots of the product for that increase bid; plus
 - (iii) if, in the same clock round, the bidder made an increase bid for lots of one or both of the other major population products – the sum of the total size of the lots of each such major population product for those increase bids; plus
 - (iv) for a set-aside participant – the size of 1 set-aside lot of the 900 upper major population product; minus
 - (v) if, in the same clock round, the bidder made a decrease bid for the lots of one or both of the other major population products – the sum of the total size of the lots of each such product for those decrease bids;in the clock round does not exceed the bidder's allocation limits (when expressed in MHz) applicable to the major population products;
 - (e) for an increase bid for lots of a regional product – the result (when expressed in MHz) of:
 - (i) the sum of the total size of the lots of each regional product for the start demand of the bidder; plus
 - (ii) the total size of the lots of the product for that increase bid; plus
 - (iii) if, in the same clock round, the bidder made an increase bid for lots of one or both of the other regional products – the sum of the total size of the lots of each such product for those increase bids; plus

- (iv) for a set-aside participant – the size of 1 set-aside lot of the 900 upper regional product; minus
 - (v) if, in the same clock round, the bidder made a decrease bid for the lots of one or both of the other regional products – the sum of the total size of the lots of each such product for those decrease bids;
- in the clock round does not exceed the bidder's allocation limits (when expressed in MHz) applicable to the regional products;
- (f) for an increase bid for lots of a product – the sum of:
 - (i) the number of lots for the bidder's start demand of the product; and
 - (ii) the number of lots for the increase bid for the product;
 in the clock round is not greater than the number of lots for the supply of the product;
 - (g) 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 2 lots of the product;
 - (h) 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 decrease bid for the product;
 in the clock round is not less than zero;
 - (i) 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 for the bidder's start demand for the product; and
 - (ii) the number of lots for the decrease bid for the product;
 in the clock round is either zero or at least 2 lots of the product;
 - (j) for an increase bid or decrease bid – the result, 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; plus
 - (ii) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder; minus:
 - (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.

Note 1: For paragraphs (d) and (e), see section 7 of the spectrum licence limits direction.

Note 2: Subsection 64(2) allows the auction manager to permit a bid to be made after a clock round has ended, in certain circumstances.

- (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 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 for lots of a product is applied in part, leaving a remainder of the decrease bid, or a decrease bid is rejected, the bidder will still have a posted demand for lots of the product for the clock round in which the decrease bid was made.

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 (*final clock round*).

17 Determination of primary winners and primary prices

- (1) A bidder who has posted demands for one or more lots of a product (*allocated lots*) as a result of the final clock round in the primary stage is a *primary winner* for those allocated lots.
- (2) The *total posted price*, for a primary winner, for allocated lots of a product, is an amount equal to:
 - (a) the posted price for a lot of that product for the final clock round; multiplied by
 - (b) the number of allocated lots comprising the posted demand of the primary winner for that product.
- (3) The *primary price*, for all the allocated lots of each product of a primary winner, is the sum of all the primary winner's total posted prices.

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) The auction manager must tell each primary winner, in writing:
 - (a) the total number of allocated lots for the primary winner; and
 - (b) the total posted price for the allocated lots of each product for the primary winner; and
 - (c) the primary price for the allocated lots of each product for the primary winner.
- (2) The auction manager must tell all bidders, in writing:
 - (a) the total number of primary winners; and
 - (b) the total number of allocated lots of each product for those primary winners.
- (3) In this clause, *allocated lots* has the meaning given by subclause 17(1).

19 End of the primary stage

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

Schedule 3—Rules for the secondary stage of the auction

(subsections 4(1) and 63(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 accordance with Schedule 1 and Schedule 2, 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 13(d) or 13(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, there is only 1 residual lot of the product available in the secondary stage of the auction.
- (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 is no residual lot 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 2.

2 Bidders to choose between products

- (1) If:
- (a) there is a residual lot of each of 2 or each of 3 major population products (the *affected lots*); and
 - (b) there is at least one bidder (the *affected bidder*) for which:
 - (i) the sum (when expressed in MHz) of:
 - (A) the size of 2 of the affected lots (whether there are 2 or 3 affected lots); and
 - (B) the size of the lots of the major population products allocated to the bidder in the primary stage; and
 - (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper major population product;would exceed the bidder's allocation limits (when expressed in MHz) applicable to the major population products; and
 - (ii) the sum (when expressed in MHz) of:
 - (A) the size of one of the affected lots; and
 - (B) the size of the lots of the major population products allocated to the bidder in the primary stage; and
 - (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper major population product;would not exceed the bidder's allocation limits (when expressed in MHz) applicable to the major population products;
- then, before the first round of the secondary stage:
- (c) the auction manager must, in writing, notify each affected bidder that each of the affected lots is 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 (5) (the ***nomination deadline***).

(2) If:

- (a) there is a residual lot of each of the 3 major population products (the ***affected lots***); and
- (b) there is at least one bidder (the ***affected bidder***) for which:
 - (i) the sum (when expressed in MHz) of:
 - (A) the size of all of the affected lots; and
 - (B) the size of the lots of the major population products allocated to the bidder in the primary stage; and
 - (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper major population product;would exceed the bidder's allocation limits (when expressed in MHz) applicable to the major population products; and
 - (ii) the sum (when expressed in MHz) of:
 - (A) the size of 2 of the affected lots; and
 - (B) the size of the lots of the major population products allocated to the bidder in the primary stage; and
 - (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper major population product;would not exceed the bidder's allocation limits (when expressed in MHz) applicable to the major population products;

then, before the first round of the secondary stage:

- (c) the auction manager must, in writing, notify each affected bidder that each of the affected lots is 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 (5) (the ***nomination deadline***).

(3) If:

- (a) there is a residual lot of each of 2 or each of 3 regional products (the ***affected lots***); and
- (b) there is at least one bidder (the ***affected bidder***) for which:
 - (i) the sum (when expressed in MHz) of:
 - (A) the size of 2 of the affected lots (whether there are 2 or 3 affected lots); and
 - (B) the size of the lots of the regional products allocated to the bidder in the primary stage; and
 - (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper regional product;would exceed the bidder's allocation limits (when expressed in MHz) applicable to the regional products; and
 - (ii) the sum (when expressed in MHz) of:
 - (A) the size of one of the affected lots; and
 - (B) the size of the lots of the regional products allocated to the bidder in the primary stage; and
 - (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper regional product;

would not exceed the bidder's allocation limits (when expressed in MHz) applicable to the regional products;

then, before the first round of the secondary stage:

- (c) the auction manager must, in writing, notify each affected bidder that each of the affected lots is 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 (5) (the ***nomination deadline***).

(4) If:

(a) there is a residual lot for each of the 3 regional products (the ***affected lots***); and

(b) there is at least one bidder (the ***affected bidder***) for which:

(i) the sum (when expressed in MHz) of:

- (A) the size of all of the affected lots; and
- (B) the size of the lots of the regional products allocated to the bidder in the primary stage; and
- (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper regional product;

would exceed the bidder's allocation limits (when expressed in MHz) applicable to the regional products; and

(ii) the sum (when expressed in MHz) of:

- (A) the size of 2 of the affected lots; and
- (B) the size of the lots of the regional products allocated to the bidder in the primary stage; and
- (C) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper regional product;

would not exceed the bidder's allocation limits (when expressed in MHz) applicable to the regional products;

then, before the first round of the secondary stage:

- (c) the auction manager must, in writing, notify each affected bidder that each of the affected lots is 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 (5) (the ***nomination deadline***).

(5) Before the nomination deadline, an affected bidder mentioned in subclause (1), (2), (3) or (4) may nominate in writing, as follows:

- (a) if subclause (1) applies to the affected bidder – to bid on the lot for one major population product specified by the bidder, and not to bid on a lot for any other major population product;
- (b) if subclause (2) applies to the affected bidder – to bid on the lot for each of two major population products specified by the bidder, and not to bid on the lot for the other major population product;
- (c) if subclause (3) applies to the affected bidder – to bid on the lot for one regional product specified by the bidder, and not to bid on a lot for any other regional product;
- (d) if subclause (4) applies to the affected bidder – to bid on the lot for each of two regional products specified by the bidder, and not to bid on the lot for the other regional product.

Note: A bidder may be an affected bidder under two of subclauses (1), (2), (3) or (4). However, a bidder will not be an affected bidder under both subclauses (1) and (2), or under both subclauses (3) and (4).

- (6) If an affected bidder nominates in accordance with subclause (5) to bid on the lot of a specified product or products, the bidder must not make a bid during the secondary stage on a lot of any other product for which the bidder is an affected bidder.
- (7) If an affected bidder does not nominate in accordance with subclause (5), the bidder must not make a bid on any of the affected lots for which the bidder is an affected bidder.

Note 1: Paragraph 13(d) makes any bid on a single lot of a major population product invalid if it would exceed the bidder's allocation limits. Paragraph 13(e) makes any bid on a single lot of a regional product invalid if it would exceed the bidder's allocation limits.

Note 2: See section 7 of the spectrum licence limits direction.

- (8) If 2 or more of subclauses (1), (2), (3) or (4) apply, the **nomination deadline** set under each subclause for each affected bidder must be the same time and date.

3 Interpretation

- (1) In this Schedule:

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

bid increment percentage: see subclause 4(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 11.

Note: Clause 11 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 other 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 15(3).

Note: Subclause 16(3) may affect the meaning of **final high bid**.

final round for bids on a lot: see subclause 15(1).

final round of the secondary stage: see subclause 15(2).

lot, unless the contrary intention appears, means a residual lot of a product.

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

recess day: see subclause 7(1).

residual price: see subclause 18(2).

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

secondary price: see subclause 18(3).

secondary winner: see subclauses 15(4) and 16(2).

specified price: see subclauses 9(2), 9(3) and 9(4)

- (2) In this Schedule, in relation to a lot of a product, the lot **meets the minimum spectrum requirement test** for a bidder if:
- (a) in relation to a lot of the 850 major population product or the 850 regional product – either:
 - (i) the bidder did not select 2 lots as the minimum spectrum requirement for the lots of that product; or
 - (ii) if the bidder selected 2 lots as the minimum spectrum requirement for the lots of that product – the bidder was allocated, in the primary stage, at least 2 lots of that product; or
 - (b) the lot is a lot of a 900 lower product; or
 - (c) in relation to a lot of the 900 upper major population product:
 - (i) if the bidder is not a set-aside participant – either:
 - (A) the bidder did not select a minimum spectrum requirement for the lots of the product; or
 - (B) if the bidder selected 2 lots as the minimum spectrum requirement for the lots of the product – the bidder was allocated, in the primary stage, at least 2 lots of the product; or
 - (ii) the bidder is a set-aside participant; or
 - (d) in relation to a lot of the 900 upper regional product:
 - (i) if the bidder is not a set-aside participant – either:
 - (A) the bidder did not select a minimum spectrum requirement for the lots of the product; or
 - (B) if the bidder selected 2 lots as the minimum spectrum requirement for the lots of the product – the bidder was allocated, in the primary stage, at least 2 lots of the product; or
 - (ii) the bidder is a set-aside participant.

Part 2 Arrangements for secondary stage

4 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 auction manager must prepare an anticipated schedule for the rounds between those times.
- (4) There is no maximum or minimum length for a round, and no maximum or minimum length for the interval between two rounds.
- (5) There is no upper or lower limit on the number of rounds per day.

- (6) The auction manager (using 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 in writing of the change as soon as practicable.
- (7) Before the first round of the secondary stage, the auction manager must set a percentage (***bid increment percentage***) for each residual lot, to be applied in calculating the specified price of each lot for each round.

Note: The auction manager may vary the bid increment percentage set under this subclause: see clause 10.

- (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:
 - (a) may be different for different lots; and
 - (b) may be different for the same lot for different rounds of the secondary stage.

5 Rounds of the secondary stage

- (1) Each residual lot is available for bidding:
 - (a) in the first round of the secondary stage; and
 - (b) in each subsequent round of the secondary stage until the final round for bids on that lot.
- (2) Subject to this Schedule, during a round of the secondary stage, each bidder may make a bid on each lot that:
 - (a) is available for bidding during the round; and
 - (b) meets the minimum spectrum requirement test for the bidder; and
 - (c) is not a lot the bidder is prohibited from bidding on, in accordance with subclause 2(6) or 2(7).

Note 1: Each bid is made on a single lot: see the definition of ***bid*** in subclause 3(1),

Note 2: Subclauses 2(6) and 2(7) prevent some bidders from bidding on some lots.

Note 3: See also clause 8.

6 Information available during the secondary stage

- (1) Before the start time of each round of the secondary stage, the auction manager must provide the following information to each bidder for that round, using the auction system:
 - (a) the 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 would not exceed the bidder's allocation limits;

- (d) any other information the auction manager considers necessary or convenient to conduct the secondary stage.

Note 1: Clause 11 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: For sub-subparagraph (c)(iv)(B), see section 7 of the spectrum licence limits direction.

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

7 Recess days

- (1) The auction manager may declare a working day to be a *recess day* on which there will be no rounds of the secondary stage.
- (2) Before declaring a recess day, the auction manager must:
 - (a) give bidders an opportunity to comment on the proposed declaration; and
 - (b) take into account any comments received.
- (3) If the auction manager decides to declare a working day to be a recess day, the auction manager must tell each bidder in writing.

Part 3 Bidding in the secondary stage

8 When a bidder cannot make a bid on a lot

- (1) 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 14 in relation to a lot;the bidder cannot make a bid on that lot in any subsequent round of the secondary stage.

Note 1: See clauses 12 and 14 for some specific rules about continue bids and exit bids.

Note 2: An exit bid made by the bidder may still be the final high bid for a lot, except where clause 14 applies.

- (2) If a set-aside participant is not entitled to bid during the primary stage and the secondary stage, that set-aside participant is not entitled to bid in any round of the secondary stage.

Note: See also subclauses 2(6) and 2(7) for other circumstances when a bidder is not entitled to make bids during the secondary stage.

9 Starting price and specified price

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

Note: For starting prices, see paragraph 28(1)(a) and 43(1)(a) of this instrument. For the validity of bids, see clause 13.

- (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 thousand.
- (3) The **specified price** for a lot in a round of the secondary stage, other than the first round, 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 thousand.
- (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.

10 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 4(7).

- (2) Before changing the bid increment percentage for a lot, the auction manager must:
- (a) tell each bidder in writing of the proposed change; and
 - (b) give each bidder an opportunity to comment on the proposed change within the time (not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received within that time.
- (3) If the auction manager decides to change the bid increment percentage for a lot, the auction manager must notify each bidder for the round when the change takes effect, before that round.

11 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 13; and
 - (c) must not make a bid on a lot if subclause 2(6) or 2(7), or clause 8 or 14, provides that the bidder cannot make, or is not entitled to make, a bid on the lot.
- (2) Except where subsection 64(1) or 64(2) applies, a bidder's bid in a round of the secondary stage is taken to have been made when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 64(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 64(2) allows the auction manager to permit a bid to be made after a clock round 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 performed by the auction system. The bid for the lot of a product that is treated as binding for a bidder is the bid in the auction system at the end time of the round.

Note: See clauses 12 and 14 for some specific rules about continue bids and exit bids. The definition of *bid* in subclause 3(1) includes a bid that is taken to be made.

12 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 3(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*+1;
 - (c) for round *N*+3, the specified price is \$134,000, and the bid is taken to be an exit bid for round *N*+3.
- (2) Subclause (1) is subject to any other bid made by a bidder on the lot in a round after the relevant round.

13 Validity of bids

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

- (a) except where subsection 64(2) applies, the bid is received by the auction system between the start time and the end time of the round;
- (b) 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;
- (c) the bid is a multiple of 1,000;
- (d) if the bid is for a lot of a major population product – the sum (when expressed in MHz) of:
 - (i) the size of the lot; and
 - (ii) the total size of the lots of major population products allocated to the bidder in the primary stage; and
 - (iii) if, in the same round, the bidder made at least one bid for a lot of a different major population product – the size of each such lot; and

- (iv) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper major population product; does not exceed the bidder’s allocation limits (when expressed in MHz) applicable to major population products;
- (e) if the bid is for a lot of a regional product – the sum (when expressed in MHz) of:
 - (i) the size of the lot; and
 - (ii) the total size of the lots of regional products allocated to the bidder in the primary stage; and
 - (iii) if, in the same round, the bidder made at least one bid for a lot of a different regional product – the size of each such lot; and
 - (iv) if the bidder is a set-aside participant – the size of 1 set-aside lot of the 900 upper regional product; does not exceed the bidder’s allocation limits (when expressed in MHz) applicable to regional products;
- (f) the bid is not prohibited by subclause 2(6) or 2(7).

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 3(1) includes a bid that is taken to be made.

Note 3: See subclauses 2(6) and 2(7), and clauses 8 and 14, for circumstances when a bidder may not be able to make a bid.

Note 4: For paragraphs (d) and (e), see section 7 of the spectrum licence limits direction.

14 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 3(1) includes a bid that is taken to be made.

Part 4 Determining the secondary winners and secondary prices

15 Final round for bids on a lot, final round of the secondary stage, secondary winners 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:
 - (a) only one bid is made on the lot; or
 - (b) one or more exit bids, and no more than one continue bid, are made on the lot; or
 - (c) no bids are made on the lot.

Note 1: For rules about bidding, see clauses 11 to 14.

Note 2: The definition of *bid* in subclause 3(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:
 - (a) the round was a round for bids on one or more lots; and
 - (b) 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:
- (a) if one bid was made on the lot in the final round for bids on the lot – that bid; or
 - (b) if one continue bid was made on the lot in the final round for bids on the lot – that continue bid; or
 - (c) if all of the following apply:
 - (i) no continue bid was made on the lot in the final round for bids on the lot;
 - (ii) two or more exit bids were made on the lot in the final round for bids on the lot;
 - (iii) one of those exit bids (the **high exit bid**) was greater than each of the other exit bids;
– the high exit bid; or
 - (d) in any other case – selected in accordance with clause 16.
- (4) Subject to subclause 16(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 12.

Note 2: The definition of **bid** in subclause 3(1) includes a bid that is taken to be made.

16 Tiebreaker for a lot

- (1) This clause applies in relation to a lot if:
- (a) no continue bid was made on the lot in the final round for bids on the lot; and
 - (b) two or more exit bids were made on the lot in the final round for bids on the lot; and
 - (c) of those exit bids:
 - (i) two or more of those exit bids were equal (the **tied exit bids**); and
 - (ii) the tied exit bids were greater than each other exit bid mentioned in paragraph (b).
- (2) Where this 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 15(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

17 End of rounds of the secondary stage

The rounds of the secondary stage will end immediately after:

- (a) if:
 - (i) clause 16 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 16(2) occurs; or
- (b) in any other case – the final round of the secondary stage.

18 Determination of secondary prices

- (1) Each secondary winner for a lot is allocated that lot (*allocated lot*).
- (2) The *residual price* for an allocated lot is an amount equal to:
 - (a) if there is only one bid on the lot in the secondary stage – the starting price for the lot; or
 - (b) if there is more than one bid on the lot in the secondary stage – the highest bid made for the lot by any other 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 the secondary winner is the sum of all the secondary winner's residual prices.

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*.

19 Results of the secondary stage

- (1) The auction manager must tell each secondary winner, using the auction system:
 - (a) the lots allocated to the secondary winner; and
 - (b) the residual price for each allocated lot, and the secondary price to be paid by the secondary winner for all allocated lots.
- (2) The auction manager must tell all bidders, in writing:
 - (a) the total number of secondary winners; and
 - (b) for each lot allocated to a secondary winner under this Schedule, the product to which the lot belongs.
- (3) In this clause, *allocated lots* has the meaning given by subclause 18(1).

20 End of the secondary stage

- (1) The auction manager must tell each primary winner, each secondary winner and each set-aside participant, the sum of:
 - (a) the primary price for the person; and
 - (b) the secondary price for the person; and
 - (c) if the person is a set-aside participant – the set-aside price for each set-aside lot allocated to the participant;for the lots allocated to the person under Schedule 1, Schedule 2 or this Schedule.
- (2) Immediately after the auction manager provides the results in accordance with clause 19, the auction manager must tell each bidder, in writing, that the secondary stage is completed and the auction will progress to the assignment stage.

Note: The assignment stage also deals with the allocation of the downshift metropolitan lot and the downshift regional lot.

Schedule 4—Rules for the assignment stage of the auction

(subsection 4(1), paragraphs 60(4)(c) and (d), subsection 63(3), paragraph 76(1)(c) and section 80)

Part 1 Application and interpretation

1 Application of Schedule

- (1) This Schedule applies to:
 - (a) the lots of each product that were allocated to a bidder in the primary stage; and
 - (b) the lots of each product that were allocated to a bidder in the secondary stage (if any); and
 - (c) if subsection 62(1) applies in relation to the auction – the set-aside lots; and
 - (d) the downshift metropolitan lot and the downshift regional lot.
- (2) This Schedule is for:
 - (a) the assignment of frequency ranges to lots of a product (or group of products) that were allocated to a primary winner in the primary stage; and
 - (b) the assignment of frequency ranges to lots of a product (or group of products) that were allocated to a secondary winner in the secondary stage (if any); and
 - (c) the assignment of frequency ranges to each set-aside lot (if any); and
 - (d) allocation of the downshift metropolitan lot and the downshift regional lot.

2 Interpretation

In this Schedule:

assignment bidder, for an assignment round, means a person specified in subclause 4(1).

assignment round means a round for the making of assignment bids.

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

results: see clause 12.

unallocated lot means

- (a) for the 850 major population product, the 850 regional product, or a 900 lower product – a lot of the product that was not allocated in the primary stage or the secondary stage; or
- (b) for a 900 upper product – a lot of the product, other than a set-aside lot, that was not allocated in the primary stage or the secondary stage.

winning assignment bid: see clause 7.

Note: For the definition of **size** and **total size**, see subsection 5(3).

Part 2 Arrangements for assignment stage

3 Schedule for assignment rounds

- (1) After the completion of the secondary stage (or the primary stage, if there is no secondary stage), 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 48 hours between the completion of the secondary stage (or primary stage, if there is no secondary stage), and the start of the first assignment round.

Note: See Division 3 of Part 5 of this instrument for things that may need to happen 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 auction manager must prepare an anticipated schedule for the assignment rounds between those times.
- (5) There is no maximum or minimum length for an assignment round, and no maximum or minimum length for the interval between two rounds.
- (6) The auction manager must set the order in which the products are subjects of assignment rounds.
- (7) Two or more products may be the subject of a single assignment round.
- (8) A product must not be the subject of more than one assignment round.
- (9) Despite anything else in this Schedule, a 900 lower product must not be the subject of an assignment round.
- (10) This clause is subject to subclause 4(8).

Part 3 Bidding in the assignment stage

4 Frequency range options in assignment rounds

Generally

- (1) Bidding in an assignment round is only open to:
 - (a) each bidder who was allocated in the primary stage at least one lot of a product that is the subject of the assignment round; and
 - (b) each bidder who was allocated in the secondary stage one lot of a product that is the subject of the assignment round; and
 - (c) if the 900 upper major population product is the subject of the assignment round – each set-aside participant; and
 - (d) if the 900 upper regional product is the subject of the assignment round – each set-aside participant;

(assignment bidders).
- (2) For each product, other than a 900 lower product, the auction manager must determine a list of frequency range options available to each assignment bidder so that:
 - (a) the frequency ranges included within each option for an assignment bidder are a pair of contiguous frequency ranges, each frequency range corresponding in bandwidth to half of:
 - (i) the total size of the lots of the product that the assignment bidder was allocated in the primary stage; and
 - (ii) if the assignment bidder was allocated a lot of the product in the secondary stage – the size of that lot; and
 - (iii) if the applicant is a set-aside participant and the product is the 900 upper major population product – the size of 1 set-aside lot of the 900 upper major population product; and

- (iv) if the applicant is a set-aside participant and the product is the 900 upper regional product – the size of 1 set-aside lot of the 900 upper regional product; and
- (b) for each option in the list of frequency range options available to an assignment bidder, there exists at least one frequency range option for every other assignment bidder such that:
 - (i) each assignment bidder's frequency range complies with paragraph (a); and
 - (ii) none of the frequency ranges overlap; and
- (c) subclause (3) is satisfied.

Note: Where a set-aside participant has been allocated a set-aside lot of the 900 upper major population product and a set-aside lot of the 900 upper regional product, a different frequency range may be assigned to each set-aside lot as a result of this Schedule and the assignment bids made.

Example: A set-aside participant is allocated a set-aside lot of the 900 upper major population product and a set-aside lot of the 900 upper regional product, and no other lots of any product. As a result of this Schedule and the assignment bids made:

- (a) the set-aside lot of the 900 upper major population product is assigned the frequency ranges 895 MHz to 900 MHz and 940 MHz to 945 MHz; and
- (b) the set-aside lot of the 900 upper regional product is assigned the frequency ranges 910 MHz to 915 MHz and 955 MHz to 960 MHz.

Contiguity between 900 lower products and 900 upper products allocated to an assignment bidder

- (3) If an assignment bidder has been allocated:
 - (a) both:
 - (i) the one lot of the 900 lower major population product; and
 - (ii) at least one lot of the 900 upper major population product (whether or not the lot is a set-aside lot); or
 - (b) both:
 - (i) the one lot of the 900 lower regional product; and
 - (ii) at least one lot of the 900 upper regional product (whether or not the lot is a set-aside lot);

then the auction manager must ensure that:

- (c) if paragraph (a) applies – every frequency range option available to the assignment bidder for the 900 upper major population product includes:
 - (i) the frequency range 895 MHz to 900 MHz; and
 - (ii) the frequency range 940 MHz to 945 MHz; and
- (d) if paragraph (b) applies – every frequency range option available to the assignment bidder for the 900 upper regional product includes:
 - (i) the frequency range 895 MHz to 900 MHz; and
 - (ii) the frequency range 940 MHz to 945 MHz.

Where one assignment round deals with more than one product

- (4) If an assignment bidder is participating in an assignment round for two or more products, the auction manager must determine a list of frequency range options available to that bidder that deals with the products as a group, providing the requirements of subclauses (2) and (3) are met for each individual product in the group.

Where assignment round is unnecessary

- (5) If, for an assignment round for a product, there is only one frequency range option available to each assignment bidder that is participating in the assignment round:
- (a) subject to subclause (8), no assignment round for the product needs to be conducted; and
 - (b) this Schedule applies as if:
 - (i) subject to subclause (8), an assignment round for the product was conducted; and
 - (ii) each assignment bidder made an assignment bid with a bid price of zero for the only frequency range option available to the bidder.

Schedule of assignment rounds

- (6) At least 24 hours before the start of the first assignment round, the auction manager must provide each assignment bidder participating in the assignment stage with the list of frequency range options available to the bidder in each of the assignment rounds for:
- (a) the lots of a product that were allocated to the bidder in the primary stage or secondary stage; and
 - (b) if the assignment bidder is a set-aside participant and the assignment round is for the 900 upper major population product – 1 set-aside lot of the 900 upper major population product; and
 - (c) if the assignment bidder is a set-aside participant and the assignment round is for the 900 upper regional product – 1 set-aside lot of the 900 upper regional product.
- (7) If subclause (5) applies in relation to a product, the auction manager must, at least 24 hours before the start of the first assignment round, inform each assignment bidder that is participating in the assignment round for that product;
- (a) that no assignment round for the product needs to be conducted; and
 - (b) of the only frequency range option available to the bidder for that product; and
 - (c) that, for the purposes of this Schedule, the assignment bidder is taken to have made an assignment bid with a bid price of zero for that frequency range option.
- (8) If subclause (5) applies in relation to each product (other than the 900 lower products):
- (a) despite paragraph (5)(a) and subparagraph (5)(b)(i), one assignment round is conducted for all products (other than the 900 lower products); and
 - (b) that assignment round is scheduled in accordance with clause 3; and
 - (c) for each product, no assignment bidder who is participating in the assignment round in relation to that product may make an assignment bid other than the bid mentioned in subparagraph (5)(b)(ii).

Note: Assignment bidders will not use the auction system to make assignment bids during the assignment round mentioned in subclause (7). In this case, the assignment price for all bidders will be zero.

5 Assignment bids

- (1) An **assignment bid** consists of:
- (a) the frequency range option that is being bid on; and
 - (b) a bid price for that option that is a multiple of 1,000.

Note: If an assignment round is for two or more products, the frequency range option that is being bid on applies in relation to each of those products.

- (2) An assignment bidder:
- (a) may, for each option in the list of frequency range options provided to the bidder by the auction manager, make a single assignment bid on that option; and
 - (b) must not make an assignment bid on a frequency range that is not in the list of frequency range options.
- Note: See subclauses (5) and (6) for when an assignment bid is taken to be made.
- (3) Except where subsection 64(1) or 64(2) applies, an assignment bidder's assignment bid in an assignment round is taken to have been made when the bid has passed data validation checks that are performed by the auction system.
- Note: Subsection 64(1) allows the auction manager to permit an assignment bid to be made other than by using the auction system, in certain circumstances. Subsection 64(2) allows the auction manager to permit an assignment bid to be made after an assignment round has ended, in certain circumstances.
- (4) An assignment 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 performed by the auction system. The assignment bid that is treated as binding for an assignment bidder is the assignment bid in the auction system at the end time of the assignment round.
- Note: An assignment bidder may also be taken to make an assignment bid in accordance with section 64, or subclauses (5) or (6). See also subclause 4(7).
- (5) In an assignment round, if there is a frequency range option in the list of frequency range options for an assignment bidder on which:
- (a) no assignment bid is made by the bidder; or
 - (b) the bidder made an invalid assignment bid;
- the assignment bidder is taken to have made an assignment bid on that frequency range option with a bid price of zero dollars.
- (6) In any assignment round, if an assignment bidder does not make an assignment bid, the bidder is taken to have made an assignment bid on each frequency range option in the list of frequency range options for the bidder, with a bid price of zero dollars.

6 Validity of assignment bids

An assignment bid is valid if all of the following apply in relation to the bid:

- (a) except where subsection 64(2) applies, the assignment bid is received by the auction system between the start time and the end time of the assignment round for a product or group of products;
- (b) the assignment bid is for a frequency range in the list of frequency range options provided to the assignment bidder who made the bid;
- (c) the bid price is a multiple of 1,000.

Note: Subsection 64(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 tell each assignment bidder in the round its winning assignment bid.

- (2) The **winning assignment bids** for an assignment round must be a combination of valid assignment bids such that:
 - (a) only one assignment bid is selected from each assignment bidder for the assignment round; and
 - (b) the frequency ranges included in any pair of winning assignment bids for a product, or group of products, do not overlap.
- (3) Subject to subclause (4), the **winning assignment bids** are the assignment bids in the combination of valid assignment bids that:
 - (a) complies with subclause (2); and
 - (b) maximises the sum of the bid prices in the assignment bids
- (4) If more than one combination of valid assignment bids (**valid combinations**) satisfies subclause (3), the **winning assignment bids** are the assignment bids in the valid combination selected by pseudorandom process from all those valid combinations.

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 Assignment of frequencies and determination of assignment prices

Generally

- (1) After the end of an assignment round, the auction manager must tell each assignment winner in the assignment round its assignment price for the frequency range assigned to the lots of the product.
- (2) If there is only one assignment bidder in an assignment round, then for that bidder the **assignment price** for a frequency range for the product the subject of that assignment round is zero.
- (3) If there is more than one assignment bidder in an assignment round, then for each bidder the **assignment price** for a frequency range for the product the subject of that assignment round is worked out in accordance with subclauses (4) to (7).

Assignment price where more than one assignment bidder in an assignment round

- (4) For an assignment bidder, the assignment price for a frequency range must be no more than the bid price in the assignment bid for that frequency range made by that winner.
- (5) For an assignment bidder, the assignment price for a frequency range may be zero.
- (6) Subject to subclause (4), the set of assignment prices in an assignment round must be such that:
 - (a) there is no alternative assignment bidder, or group of assignment bidders, who (based on their assignment bids) would pay more than any assignment winner or group of assignment winners for the assignment round; and
 - (b) if more than one set of assignment prices satisfies paragraph (a) – the sum of the assignment prices is minimised; and
 - (c) if more than one set of assignment prices satisfies paragraphs (a) and (b) – the set of assignment prices is the solution to the formula in subclause (7).

(7) For paragraph (6)(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 (6)(a) and (6)(b);

where:

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

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

$\{w_j\}_{j \in J}$ is the set of prices the assignment 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 assignment 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 made assignment bids of zero dollars for every frequency range option; less
- (b) the sum of bid prices for all other winning assignment bids in the assignment round.

Note: For starting prices, see paragraph 28(1)(a) or 43(1)(a).

Assignment winners and total assignment price

- (8) An assignment 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.
- (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 for an assignment winner is the amount equal to the sum of all the assignment prices for the assignment winner that are mentioned in subclause (2) or (3), and in clause 9.
- (10) The assignment prices calculated under subclause (6) must be rounded to the nearest thousand.

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*.

9 Assignment of frequencies for 900 lower products

If a bidder was allocated the lot of a 900 lower product in the primary or secondary stage:

- (a) immediately before the first assignment round, the lot is assigned the frequency ranges:
 - (i) 890 MHz to 895 MHz; and
 - (ii) 935 MHz to 940 MHz; and

- (b) that bidder is an *assignment winner* for the lot of that product; and
- (c) the *assignment price* for that lot is zero.

Note: Paragraph (c) 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 Allocation of downshift spectrum

10 Allocation of downshift spectrum

- (1) If a bidder was allocated the lot of the 900 lower major population product in the primary or secondary stage, then, immediately before the first assignment round, the downshift metropolitan lot is allocated to that bidder.

Note: In accordance with the marketing plan, a licence for the downshift metropolitan lot will be issued to the relevant assignment winner as a separate spectrum licence to any other spectrum licence issued to that assignment winner as a result of this instrument.

- (2) If a bidder was allocated the lot of the 900 lower regional product in the primary or secondary stage, then, immediately before the first assignment round, the downshift regional lot is allocated to that bidder.

Note: In accordance with the marketing plan, a licence for the downshift regional lot will be issued to the relevant assignment winner as a separate spectrum licence to any other spectrum licence issued to that assignment winner as a result of this instrument.

- (3) For the avoidance of doubt, the operation of this clause does not affect any amount any person has to pay in accordance with this instrument.

11 Downshift spectrum not allocated

- (1) If the lot of the 900 lower major population product is an unallocated lot, then both of the following parts of the spectrum in the downshift metropolitan area are taken to be unallocated, and section 80 applies to them:

- (a) 824 MHz to 825 MHz; and
- (b) 869 MHz to 870 MHz.

- (2) If the lot of the 900 lower regional product is an unallocated lot, then both of the following parts of the spectrum in the downshift regional area are taken to be unallocated, and section 80 applies to them:

- (a) 824 MHz to 825 MHz; and
- (b) 869 MHz to 870 MHz.

- (3) For the avoidance of doubt, the operation of this clause does not affect any amount any person has to pay in accordance with this instrument.

- (4) In this clause:

downshift metropolitan area has the meaning given by subsection 5(1) of the marketing plan.

downshift regional area has the meaning given by subsection 5(1) of the marketing plan.

Part 6 Bringing the assignment stage to an end

12 Results of the assignment stage

- (1) After the end of all assignment rounds, the auction manager must tell each assignment winner, in writing:
 - (a) the frequency ranges assigned to:
 - (i) the lots of each product that were allocated to the assignment winner in the primary stage or secondary stage (if any); and
 - (ii) if the assignment winner is a set-aside participant – the winner’s set-aside lots; and
 - (b) the assignment price for each such frequency range;

(results).
- (2) After the end of all assignment rounds, if subclause 10(1) applies in relation to an assignment winner, the auction manager must tell the assignment winner, in writing, that it has been allocated the downshift metropolitan lot.
- (3) After the end of all assignment rounds, if subclause 10(2) applies in relation to an assignment winner, the auction manager must tell the assignment winner, in writing, that it has been allocated the downshift regional lot.

13 End of the assignment stage

The assignment stage is complete when the auction manager has, under clause 12:

- (a) notified all assignment winners of the results of every assignment round; and
- (b) if subclause 10(1) applies in relation to an assignment winner – notified that assignment winner that it has been allocated the downshift metropolitan lot; and
- (c) if subclause 10(2) applies in relation to an assignment winner – notified that assignment winner that it has been allocated the downshift regional lot.

Schedule 5—Payment of balance of the winning price greater than zero, and issue of spectrum licences

(subparagraphs 10(4)(b)(i) and 10(4)(c)(i), sections 78 and 80, paragraphs 85(1)(e) and 86(a))

Part 1 Application and interpretation

1 Application of Schedule

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

Note 1: 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 2: This Schedule is made under section 294 of the Act, and is disallowable under section 42 of the *Legislation Act 2003*.

Note 3: For information on how an amount must be paid, see section 10.

2 Interpretation

In this Schedule, 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 75(1).

Note 2: For the definition of **balance of the winning price**, see subsection 75(2).

Part 2 Payment of winning price

3 Payment of balance of winning price

- (1) The ACMA must notify a winning bidder, in writing, of the following:
 - (a) the winning price for the winning bidder;
 - (b) the effect on the winning price of any eligibility payments made under subsection 31(7), 38(7) or 48(4), in accordance with section 42, or of an additional eligibility payment made under subsection 46(4) for the purposes of section 42;
 - (c) that the balance of the winning price must be paid in full;
 - (d) the date by which the balance of the winning price must be paid to the ACMA.
- (2) For paragraph (d), the date must be at least 20 working days after the ACMA notifies the winning bidder under subclause (1).
- (3) 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.
- (4) The ACMA must give a notice to a winning bidder under subclause (1) no later than 1 June 2024.

Note: A revised notice under subclause (3) may be given after 1 June 2024.

Part 3 Issue of spectrum licences

4 Issue of spectrum licences

If a winning bidder pays the balance of the winning price in accordance with the notice given under subclause 3(1), the winning bidder is entitled to be issued:

- (a) a spectrum licence for each part of the spectrum assigned to the lots, other than the downshift metropolitan lot and the downshift regional lot, allocated to the bidder; and
- (b) if the bidder was allocated the downshift metropolitan lot – a spectrum licence for the downshift metropolitan lot; and
- (c) if the bidder was allocated the downshift regional lot – a spectrum licence for the downshift regional lot.

Note 1: In accordance with the marketing plan, a spectrum licence for the downshift metropolitan lot, and a spectrum licence for the downshift regional lot, will be issued to the relevant winning bidder as a separate spectrum licence to any other spectrum licence issued to that winning bidder as a result of this instrument.

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

5 Default

If a winning bidder does not pay the balance of the winning price in accordance with the notice given under subclause 3(1):

- (a) spectrum licences are not allocated to the winning bidder under this instrument; and
- (b) the allocation of spectrum licences in accordance with this instrument to other bidders is not affected; and
- (c) section 80 applies to each lot (and associated spectrum assigned to each lot), including the downshift metropolitan lot and the downshift regional lot, that, but for this subclause, would have been included in a spectrum licence allocated to the winning bidder.

Note: See section 85 for when certain breaches of this instrument have occurred, and section 89 in relation to other rights of the ACMA and the Commonwealth.