

SUPPLEMENTARY EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Spectrum Licence Allocation – 3.4/3.7 GHz Bands) Determination 2023

Authority

The Australian Communications and Media Authority has made the *Radiocommunications (Spectrum Licence Allocation – 3.4/3.7 GHz Bands) Determination 2023* (**determination**) under sections 60 and 204 of the *Radiocommunications Act 1992*.

This supplementary explanatory statement supplements the explanatory statement to the determination as set out below.

Attachment A

At the end of the Attachment, add:

Auction manager's functions and powers

The procedures for the 3.7 GHz auction and for the 3.4 GHz auction require the auction manager to perform a number of functions, and exercise a number of powers, as set out below.

	Provision of determination	Function or power
1.	Subsection 6(3)	Approve electronic document formats for the provision of documents to the ACMA under the determination
2.	Subsection 36(2)	Correct information in an application to be registered as a bidder, if satisfied the information is incorrect
3.	Subsection 56(2)	Correct information in the register of bidders, if satisfied the information is incorrect
4.	Subsection 61(1)	Accept bids using a method other than the auction system, if satisfied a bidder is not able to make a bid using the auction system
5.	Subsection 61(2)	Permit a bidder to make a bid after the end of a round, if satisfied the bidder could not make the bid during the round because of technical or communication problems
6.	Subsection 62(1)	Take action (including suspending, restarting or cancelling an auction) if satisfied an auction is affected by exceptional circumstances
7.	Section 64	Tell bidders about the spectrum licences

		they have won
8.	Subsections 76(1) and (2)	Set the time and date of the first clock round of the 3.7 GHz auction, and of the pre-bidding round of the primary stage for the 3.7 GHz auction, and notifying bidders of those times and dates
9.	Subsection 76(4)	Notify bidders if the ACMA varies the time and date of the first clock round of the 3.7 GHz auction and of the pre-bidding round of the primary stage for the 3.7 GHz auction
10.	Subsections 82(1) and (3)	Set the time and date of the first clock round of the 3.4 GHz auction, and of the pre-bidding round of the primary stage for the 3.4 GHz auction, and notifying bidders of those times and dates
11.	Subsection 85(1)	Advise all bidders of results of the auctions
12.	Subsection 92(2)	Notify bidders that auction information will be published and their confidentiality obligations under the determination will end
13.	Section 94	Set or vary the bid increment percentage for use during the primary stage of an auction, inform bidders of the bid increment percentage, and consult on any variation
14.	Section 95	Set or vary the eligibility requirement percentage for use during the primary stage of an auction, inform bidders of the eligibility requirement percentage, and consult on any variation
15.	Section 96	Schedule the clock rounds of the primary stage of an auction, modify the schedule, and inform bidders of the schedule and modifications
16.	Section 97	Consult on, and declare, recess days for the primary stage of an auction
17.	Section 98	Enter information into the auction system about bidders' eligibility points and unused allocation limits before an auction
18.	Section 99	Provide specified information to bidders

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		during the primary stage of an auction
19.	Subsection 101(4)	Provide specified information to bidders after the end of the pre-bidding round of the primary stage of an auction
20.	Sections 113 and 114	Provide specified information to bidders about the results of the primary stage of an auction, and tell them that the primary stage is completed
21.	Section 116	Set or vary the bid increment percentage for use during the secondary stage of the auction, inform bidders of the bid increment percentage, and consult on any variation
22.	Section 117	Schedule the rounds of the secondary stage of an auction, modify the schedule, and inform bidders of the schedule and modifications
23.	Section 118	Consult on, and declare, recess days for the secondary stage of an auction
24.	Section 119	Enter information into the auction system about residual lots available to bidders in the secondary stage of an auction
25.	Section 120	Provide specified information to bidders during the secondary stage of an auction
26.	Subsection 122(3)	Advise bidders who are affected by allocation limits for the secondary stage of an auction, and specify a time and date for the bidders to nominate which residual lots they will bid on
27.	Subsection 124(4)	Provide specified information to bidders after the end of the pre-bidding round of the secondary stage of an auction
28.	Subsection 129(4)	Tell bidders that the secondary stage of an auction is completed and the auction is moving to the assignment stage
29.	Sections 132 and 133	Provide specified information to bidders about the results of the secondary stage of an auction, and tell them that the secondary stage is completed
30.	Subsection 135(1)	Determine frequency range options for

		bidders for the assignment stage of an auction
31.	Section 136	Provide bidders with their frequency range options
32.	Section 137	Schedule the rounds of the assignment stage of an auction, modify the schedule, and inform bidders of the schedule and modifications
33.	Section 142	Inform bidders that there will be no assignment round for a product, because there is only one frequency range option for each bidder
34.	Section 143	Tell bidders of the frequency range option in the bidders' winning bids
35.	Section 144	Determine the assignment price for winning bids in accordance with the specified formula, and tell bidders of their assignment prices
36.	Section 148	Tell bidders of the results of the assignment stage of an auction

These powers are procedural or mechanistic in nature, and are necessary for the timely, orderly and efficient conduct of an auction of spectrum licences. For example, as there are procedures that need to be undertaken to ensure that a person is not allocated spectrum licences exceeding the allocation limits set out in Part 2 of the determination, it is not practical to specify the start date and time of the first clock round of the 3.7 GHz auction in the determination itself. Instead, the determination confers on the auction manager the power to set that start date and time, to be exercised once those procedures draw to a close. As another example, the ACMA's auctions generally involve the use of bidding 'rounds' (periods of time within which a bidder can decide whether to make a bid, or to cease participation). Often, there may be several rounds in a single day. Accordingly, conferring powers in relation to these rounds on the auction manager allows for quick and responsive decisions to be made, taking into account the nature of the bids that have been made and the views of bidders. It would be cumbersome for the members of the ACMA to be required make such decisions as a body, particularly where they need to be made urgently or repeatedly.

To take another example, the auction manager's powers in relation to the results of an auction extend only to the application of the rules or formulas set out in the determination about those results, and to informing the bidders about the application of those rules or formulas. Subject to the matters discussed in the next paragraph, the auction manager does not exercise any powers that can determine any substantive results of an auction.

Although the powers conferred by subsections 61(1), 61(2) and 62(1) of the determination are procedural, their exercise may have a greater effect on a bidder in an auction than other

powers. For example, a refusal to accept a bid using a method other than the auction system may have the effect of preventing a bidder from continuing to participate in an auction. However, in each case the ACMA has provided that the power may only be exercised in very limited circumstances. In particular, the power to take action (including to cancel, suspend or restart an auction) may only be exercised if the auction manager is satisfied that the auction is affected by exceptional circumstances.

Delegation of the auction manager's functions and powers

It has been the ACMA's consistent practice to make determinations under sections 60 and 294 of the Act that confer powers of these kinds on an auction manager. To have a principal point of contact for applicants and bidders in an auction process, and to have a principal person responsible for the conduct of an auction, has been conducive to the timely, orderly and efficient conduct of an auction of spectrum licences. It provides applicants, bidders and other interested parties (such as media organisations or other government agencies and departments) with a 'first port of call' in the event of any difficulty with, or query about, the auction process.

It has also been the ACMA's practice:

- to appoint, as the auction manager a person holding a particular role within the ACMA (generally, the manager of the team responsible for spectrum licence allocation, who is employed at Executive Level 2); and
- to allow the auction manager to delegate their functions and powers.

Since 2017, the ACMA has expressly limited the class of persons to whom an auction manager could delegate their functions and powers, to members of the ACMA, or members of ACMA staff at the Executive Level 1 level or higher. Each such potential delegate is therefore subject to all the usual ethical obligations under the *Public Service Act 1999*.

Permitting the auction manager to delegate their functions and powers has been conducive to the timely, orderly and efficient conduct of auctions. There may be circumstances where an auction manager is unable to perform their functions or powers in the lead-up to, or in the course of, an auction (for example, because of illness or other sudden absence). The immediate availability of a substitute auction manager may be critical to the proper conduct of an auction. For example, several rounds of a stage might occur on a single day; if the auction manager were taken ill part way through that day, in the absence of the auction manager and any delegate, further rounds may not be able to be scheduled, or already scheduled rounds may not be able to be postponed, until a substitute auction manager is appointed. The appointment of a substitute auction manager may take some time; even if done speedily, it may interrupt the efficient conduct of a real-time auction process. Accordingly, depending on the circumstances, it may be more appropriate for a delegate of the auction manager to perform the functions and exercise the powers of the auction manager, pending an assessment of whether the auction manager can return to their duties, or whether it is more appropriate to appoint a substitute auction manager.

Skills and expertise of delegates

When conducting an auction of spectrum licences, the ACMA organises a dedicated team of staff to assist the auction manager in the performance of their functions and powers, and in the general conduct of the auction. These staff members are trained in the operation of the

auction system used to conduct the auction, and generally have experience in the conduct of past auctions. They are the persons at Executive Level 2 or Executive Level 1 to whom any delegation would be made.

In practice, the only SES employees who would receive any delegation of the auction manager's functions and powers are those who have direct supervision of, and managerial responsibility for, the auction manager and the auction system.

Any member of the ACMA, including the Chair or Deputy Chair, may exercise a power or function of the auction manager under delegation, should such delegation occur.