**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.

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|  | **Provision of determination** | **Function or power** |
|  | Subsection 6(3) | Approve electronic document formats for the provision of documents to the ACMA under the determination |
|  | Subsection 36(2) | Correct information in an application to be registered as a bidder, if satisfied the information is incorrect |
|  | Subsection 56(2) | Correct information in the register of bidders, if satisfied the information is incorrect |
|  | 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 |
|  | 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 |
|  | Subsection 62(1) | Take action (including suspending, restarting or cancelling an auction) if satisfied an auction is affected by exceptional circumstances |
|  | Section 64 | Tell bidders about the spectrum licences they have won |
|  | 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 |
|  | 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 |
|  | 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 |
|  | Subsection 85(1) | Advise all bidders of results of the auctions |
|  | Subsection 92(2) | Notify bidders that auction information will be published and their confidentiality obligations under the determination will end |
|  | 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 |
|  | 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 |
|  | Section 96 | Schedule the clock rounds of the primary stage of an auction, modify the schedule, and inform bidders of the schedule and modifications |
|  | Section 97 | Consult on, and declare, recess days for the primary stage of an auction |
|  | Section 98 | Enter information into the auction system about bidders’ eligibility points and unused allocation limits before an auction |
|  | Section 99 | Provide specified information to bidders during the primary stage of an auction |
|  | Subsection 101(4) | Provide specified information to bidders after the end of the pre-bidding round of the primary stage of an auction |
|  | 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 |
|  | 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 |
|  | Section 117 | Schedule the rounds of the secondary stage of an auction, modify the schedule, and inform bidders of the schedule and modifications |
|  | Section 118 | Consult on, and declare, recess days for the secondary stage of an auction |
|  | Section 119 | Enter information into the auction system about residual lots available to bidders in the secondary stage of an auction |
|  | Section 120 | Provide specified information to bidders during the secondary stage of an auction |
|  | 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 |
|  | Subsection 124(4) | Provide specified information to bidders after the end of the pre-bidding round of the secondary stage of an auction |
|  | Subsection 129(4) | Tell bidders that the secondary stage of an auction is completed and the auction is moving to the assignment stage |
|  | 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 |
|  | Subsection 135(1) | Determine frequency range options for bidders for the assignment stage of an auction |
|  | Section 136 | Provide bidders with their frequency range options |
|  | Section 137 | Schedule the rounds of the assignment stage of an auction, modify the schedule, and inform bidders of the schedule and modifications |
|  | 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 |
|  | Section 143 | Tell bidders of the frequency range option in the bidders’ winning bids |
|  | Section 144 | Determine the assignment price for winning bids in accordance with the specified formula, and tell bidders of their assignment prices |
|  | 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.