



# **Radiocommunications (Allocation of Transmitter Licences – High Power Open Narrowcasting Licences) Determination 2024**

---

The Australian Communications and Media Authority makes the following determination under subsection 106(1) of the *Radiocommunications Act 1992*.

Dated: 19 September 2024

Adam Suckling  
[signed]  
Member

Michael Brealey  
[signed]  
General Manager

Australian Communications and Media Authority

---

## Part 1—Preliminary

### 1 Name

This instrument is the *Radiocommunications (Allocation of Transmitter Licences – High Power Open Narrowcasting Licences) Determination 2024*.

### 2 Commencement

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

Note: The Federal Register of Legislation is available, free of charge, at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This instrument is made under subsection 106(1) of the Act.

### 4 Repeal of the *Radiocommunications (Allocation of Transmitter Licences – High Power Open Narrowcasting Licences) Determination 2014*

The *Radiocommunications (Allocation of Transmitter Licences – High Power Open Narrowcasting Licences) Determination 2014* (F2014L00426) is repealed.

### 5 Definitions and interpretation

(1) In this instrument:

*Act* means the *Radiocommunications Act 1992*.

*application fee*: see section 9.

*authorised agent*: see subsection 15(1).

*Broadcasting Services Act* means the *Broadcasting Services Act 1992*.

*business day* means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in any of:
  - (i) the Australian Capital Territory; or
  - (ii) New South Wales; or
  - (iii) Victoria.

*closing date and time*: see subsection 8(5).

Note: See also paragraph 20(2)(b).

*commencement time*: see subsection 18(1).

*company* means:

- (a) a company within the meaning of the *Corporations Act 2001*; or
- (b) a foreign corporation within the meaning of the *Corporations Act 2001*.

*contact details*, in relation to a person, means one or more of the following:

- (a) postal address;

- (b) telephone number;
- (c) email address.

**HPON licence** means a transmitter licence which authorises the operation of a radiocommunications transmitter for the provision of an open narrowcasting service at a maximum power which exceeds:

- (a) if the transmitter is operated in a residential area – 1 watt;
- (b) if the transmitter is operated in a non-residential area – 10 watts.

**Licence Allocation Exercise:** see section 22.

**locality** means an area designated as such by the Australian Bureau of Statistics in Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities, 2001 (cat. No. 2909.0).

Note: Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities, 2001 (cat. No. 2909.0) is available, free of charge, on the Australian Bureau of Statistics' website at [www.abs.gov.au](http://www.abs.gov.au).

**lodge:** see section 40.

**non-residential area** means an area other than a residential area.

**open narrowcasting service** has the meaning given by section 18 of the Broadcasting Services Act.

**registered applicant:** see subsection 14(3).

**reserve price:** see section 10.

**residential area** means the area bounded by a line that is 20 kilometres outside of an urban centre or locality.

**section 34 determination** means a determination made by the ACMA under subsection 34(1) of the Broadcasting Services Act that a specified part of the radiofrequency spectrum is available for allocation, for a specified period, to providers of open narrowcasting services.

**successful applicant**, for an HPON licence, means:

- (a) if there is more than one registered applicant for the licence — the registered applicant who, at the close of the Licence Allocation Exercise for the licence, bid an amount that is:
  - (i) the highest bid for the licence; and
  - (ii) at least the reserve price for the licence; or
- (b) if there is only one registered applicant for the licence — the registered applicant.

**urban centre** means an area designated as such by the Australian Bureau of Statistics in Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities, 2001 (cat. No. 2909.0).

Note: Statistical Geography: Volume 3 – Australian Standard Geographical Classification (ASGC) Urban Centres/Localities, 2001 (cat. No. 2909.0) is available, free of charge, on the Australian Bureau of Statistics' website at [www.abs.gov.au](http://www.abs.gov.au).

**winning price**, for an HPON licence which is allocated in accordance with Part 4, means the amount of the highest bid for the licence made by the successful applicant for the licence.

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

- (a) frequency band plan;
- (b) radiocommunications transmitter;
- (c) spectrum plan;
- (d) transmitter licence.

- (2) In this instrument, subject to section 38, a day is taken to end at 5pm in the Australian Capital Territory.

## 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 Application

- (1) The ACMA may decide to invite applications to be allocated and issued, in accordance with this instrument, an HPON licence in relation to a part of the radiofrequency spectrum specified in a section 34 determination.
- (2) This instrument applies in relation to the allocation and issue of an HPON licence if:
- (a) the ACMA has made a section 34 determination; and
  - (b) the ACMA has decided under subsection (1) to invite applications to be allocated and issued the HPON licence in relation to a part of the radiofrequency spectrum specified in that section 34 determination.

Note: This instrument does not apply to renewals of HPON licences under section 130 of the Act.

## Part 2—Preparing for allocation

### 8 Publication of notice by the ACMA

- (1) If this instrument applies to the allocation and issue of an HPON licence, the ACMA must publish a notice about the proposed allocation of the licence on its website.  
Note: The ACMA's website is [www.acma.gov.au](http://www.acma.gov.au).
- (2) The notice published under subsection (1) must:
  - (a) include an invitation for applications to be allocated and issued the HPON licence that comply with the requirements of this instrument; and
  - (b) include a statement that the ACMA proposes to allocate and issue the licence in accordance with this instrument; and
  - (c) describe the geographic location where the licence is proposed to authorise the operation of a radiocommunications transmitter; and
  - (d) specify the nominal carrier frequency or channel on which the licence is proposed to authorise the operation of a radiocommunications transmitter; and
  - (e) include the details of the section 34 determination that relates to the issue HPON licence;
  - (f) specify the closing date and time for applications for the licence set under subsection (5); and
  - (g) give details of:
    - (i) the application fee to be paid by an applicant; and
    - (ii) how it must be paid; and
  - (h) give details of how to obtain further information, in particular, details of how to obtain an information package that includes any forms necessary for taking part in the allocation of the licence.
- (3) If any of the information in a notice is or becomes incorrect, the ACMA must publish another notice giving the correct information on its website.
- (4) If a notice under subsection (3) is published:
  - (a) the ACMA must give the notice to any existing applicants for the licence within 2 business days; and
  - (b) if an existing applicant for the licence reasonably wishes to alter its application as a result of that notice – the ACMA must provide that applicant with a reasonable opportunity to do so.
- (5) Before publishing a notice under subsection (1) for an HPON licence, the ACMA must set the ***closing date and time*** for applications for the licence.
- (6) The ACMA may, before the closing date and time for applications for an HPON licence, vary the closing date and time for applications for the licence.

### 9 Application fee

The ***application fee*** is the charge fixed by the ACMA under subsection 60(1) of the *Australian Communications and Media Authority Act 2005* for, or in relation to, considering an application under this instrument.

Note: At the time this instrument was made, the charge was fixed in the *Radiocommunications (Charges) Determination 2022*, which is available, free of charge, from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

## 10 Reserve price

At or before the closing date and time for applications for an HPON licence, the ACMA must set, in writing, an amount as the *reserve price* for the licence.

Note: If Part 5 applies to the proposed issue of an HPON licence, the reserve price for the licence becomes the total price of the licence.

## 11 Form of application

- (1) An application must be made using the form approved by the ACMA for the purposes of this section (if any) and published on its website, and must:
  - (a) include the applicant's name and contact details;
  - (b) include the name and contact details of any contact person that the applicant wishes to specify for the purposes of subsection 39(1);
  - (c) identify the HPON licence for which the applicant is applying;
  - (d) be accompanied by:
    - (i) a deed (the *indemnity deed*), executed by the applicant, which gives the ACMA an indemnity by an applicant against any loss or costs that the ACMA may suffer or incur as a result of any act, default or omission by the applicant or its authorised agent at any stage during an allocation of the HPON licence that is the subject of the application; and
    - (ii) if the applicant is a company or incorporated association – a deed, executed by a director or office-bearer of the applicant, guaranteeing the performance by the applicant of its obligations under the indemnity deed.
- (2) The ACMA may approve a form for the purpose of this section.

## 12 Payment of amounts

- (1) An amount paid to the ACMA on behalf of the Commonwealth under this instrument must be paid in Australian currency.
- (2) An amount must be paid by electronic transfer or an electronic bill payment method, the details of which are:
  - (a) published on the ACMA's website for the purposes of this provision; or
  - (b) notified by the ACMA to the payer for the purposes of this provision.
- (3) An amount is taken to have been paid by a deadline specified in this instrument if:
  - (a) both:
    - (i) the ACMA receives evidence that an electronic transfer or payment 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 business 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.
- (4) 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 this subsection is that an applicant or bidder must add the value of any bank charge or government duty to the amount of a payment.

## Part 3—Applications for HPON licence

### 13 Applications

- (1) A person:
  - (a) may apply for more than one HPON licence; and
  - (b) may make only one application for any one HPON licence;
  - (c) must make a separate application for each HPON licence for which it wishes to apply; and
  - (d) may use an authorised agent for the purposes of the Licence Allocation Exercise.
- (2) The ACMA must accept an application for an HPON licence if, by the closing date and time for the licence:
  - (a) the applicant has lodged an application that complies with section 11; and
  - (b) the applicant has paid the application fee; and
  - (c) if the applicant is a company or an incorporated association – an agent has been nominated for the applicant in accordance with section 15.
- (3) The ACMA cannot accept an application other than in accordance with subsection (2).

### 14 Registration of applicants

- (1) The ACMA must maintain a register of applicants whose applications for an HPON licence have been accepted under subsection 13(2).
- (2) If the ACMA accepts an application under subsection 13(2), the ACMA must:
  - (a) register the applicant in the register maintained under subsection (1); and
  - (b) give the application a unique registration number.
- (3) If an applicant's application for an HPON licence is registered under subsection 14(2), the applicant is a **registered applicant**.

### 15 Nomination of agent

- (1) A person may nominate, in writing, an individual to act as an agent (an **authorised agent**) for the allocation of an HPON licence authorising the individual:
  - (a) to bid on behalf of the applicant at the Licence Allocation Exercise (if any) that is held for the HPON licence specified in the nomination; and
  - (b) if the applicant becomes the successful applicant for the licence by way of a Licence Allocation Exercise – to complete and lodge, on behalf of the applicant, an acknowledgment for the licence under section 23; and
  - (c) to do anything else that is reasonably necessary for, or incidental to, the things set out in paragraphs (a) and (b) on behalf of the applicant.
- (2) The ACMA may approve a form of nomination for the purposes of subsection (1).
- (3) If the ACMA has approved a form under subsection (2) and published it on its website, the nomination under subsection (1) must be made using the form.
- (4) A nomination under subsection (1) must be given to the ACMA:
  - (a) if the person is a company or incorporated association– before the closing date and time for applications for the licence;

- (b) if the person is a company or incorporated association and wishes to change the nomination already provided under subsection (1) – at least 2 business days before the day the Licence Allocation Exercise for the licence is scheduled to commence;
  - (c) if the person is not a company or incorporated association – at least 2 business days before the day the Licence Allocation Exercise for the licence is scheduled to commence.
- (5) A registered applicant:
- (a) may nominate more than one agent for the purposes of a Licence Allocation Exercise; and
  - (b) must give a separate nomination for each agent so nominated.

Note: The ACMA must not accept an application for an HPON licence from an applicant that is a company or incorporated association unless the applicant has nominated at least one authorised agent: see paragraph 13(2)(c).

## **Part 4—Allocation of licence if there is more than one registered applicant**

### **16 Application of Part 4**

This Part applies if, at the closing date and time for applications for an HPON licence, there are 2 or more registered applicants for the licence.

### **17 Licence Allocation Exercise to be conducted**

- (1) Subject to section 20, the ACMA must conduct a Licence Allocation Exercise for the licence unless, before the Licence Allocation Exercise commences, the issue of the licence is terminated under section 33.
- (2) Nothing in this instrument prevents the ACMA from holding 2 or more Licence Allocation Exercises on one day.

### **18 Notice of Licence Allocation Exercise**

- (1) The ACMA must, in writing, set the date and time when the Licence Allocation Exercise for an HPON licence is to commence (the *commencement time*).

Note: The commencement time must be at least 10 days after the closing date and time for applications, to enable the ACMA to comply with subsection (2).

- (2) The ACMA must give to each registered applicant for an HPON licence, at least 10 days before the commencement time for the licence, a notice setting out:
  - (a) the commencement time for the licence; and
  - (b) how a registered applicant may bid in the Licence Allocation Exercise for the licence; and
  - (c) any other information that the ACMA considers necessary.
- (3) If the ACMA varies the commencement time, or decides to change another matter notified to registered applicants under subsection (2), the ACMA must give each registered applicant a further notice under subsection (2).
- (4) A notice given under subsection (3) may be given less than 10 days before the day when the Licence Allocation Exercise is to be held.

### **19 Withdrawal of application**

A registered applicant may withdraw its application for a licence by notifying the ACMA in writing before the commencement time.

### **20 Part 5 applies if all but one of the registered applicants withdraw before the Licence Allocation Exercise starts**

- (1) Subsection (2) applies if:
  - (a) more than one registered applicant has applied for an HPON licence; and
  - (b) all but one of the registered applicants withdraw their applications for the licence before the commencement time.
- (2) Part 5 applies to the remaining registered applicant for the HPON licence as if:
  - (a) the applicant had been the only registered applicant for the licence; and

- (b) the closing date and time for applications for the licence was the time when the last of the other applications for the licence was withdrawn.

## 21 Who may bid at a Licence Allocation Exercise?

- (1) Subject to subsection (2), a person may bid for an HPON licence at a Licence Allocation Exercise only if the person is:
  - (a) an individual who is a registered applicant for the allocation of the licence; or
  - (b) an authorised agent of a registered applicant for the allocation of the licence.
- (2) A person must not bid at a Licence Allocation Exercise unless:
  - (a) both:
    - (i) before the commencement time, but on the day the Exercise is to commence, the person has produced evidence of their identity to the ACMA; and
    - (ii) having considered that evidence, the ACMA is satisfied that the person is either a registered applicant or the authorised agent of a registered applicant for the allocation of the relevant licence; and
  - (b) the ACMA has given the person a bidding number or unique log on details under subsection (3).
- (3) Before the commencement time, the ACMA must give each person who may bid for an HPON licence a bidding number or unique log on details, which enable the bidder to be identified during the Licence Allocation Exercise.

## 22 Licence Allocation Exercise

- (1) A *Licence Allocation Exercise* for an HPON licence is a process conducted in accordance with this section.
- (2) The ACMA:
  - (a) may, before or after the commencement time, set a price (the *opening price*) for an HPON licence, below which no bid may be made; and
  - (b) if the ACMA sets an opening price – must announce the opening price as soon as reasonably practicable to the persons who may bid on the licence.
- (3) The opening price for an HPON licence must be not greater than the reserve price for the licence.
- (4) After the commencement time, a person may, in accordance with any instructions given by the ACMA, bid on the HPON licence at a price that is not less than the opening price (if any). A person must use the bidding number or unique log on details provided to them under subsection 21(3) when bidding.
- (5) If:
  - (a) no person bids an amount equal to or greater than the reserve price for the HPON licence; and
  - (b) the ACMA is satisfied that no person is likely to bid an amount equal to or greater than the reserve price;the ACMA must terminate the Licence Allocation Exercise for the licence.
- (6) If a dispute arises during a Licence Allocation Exercise for an HPON licence concerning:
  - (a) a bid; or
  - (b) a person's entitlement to bid; or
  - (c) the conduct of the Licence Allocation Exercise;

- the ACMA must determine the dispute, and must then, as it considers appropriate:
- (d) continue the Licence Allocation Exercise; or
  - (e) terminate the Licence Allocation Exercise; or
  - (f) set a price (the *re-start price*) for the licence, below which no bid may be made, and continue the Licence Allocation Exercise.
- (7) If paragraph (6)(f) applies, a person may, after the Licence Allocation Exercise is continued, bid on the HPON licence at a price that is not less than the re-start price.
- (8) If, at a time:
- (a) at least one person has bid on an HPON licence for an amount that is equal to or greater than the reserve price; and
  - (b) the ACMA is satisfied that no bids for the licence will be made after the time;
- the ACMA may close the Licence Allocation Exercise.
- (9) Subject to subsection (10), if a Licence Allocation Exercise for an HPON licence is terminated under this section, the ACMA must not issue the licence.
- (10) Subsection (9) does not apply to the issue of an HPON licence:
- (a) in accordance with section 35; or
  - (b) as a result of the ACMA publishing another notice under subsection 8(1) for the licence.

### **23 Acknowledgment by successful applicant**

Within 10 business days after becoming a successful applicant for an HPON licence, the applicant must lodge with the ACMA a written acknowledgment of the following:

- (a) that the successful applicant has relied solely on:
  - (i) its own skill, judgment and investigations; and
  - (ii) the skill, judgment and investigations of persons acting on its behalf;in applying for the licence, and in forming its opinion of the value of the licence; and
- (b) that the successful applicant is aware that becoming a successful applicant does not entitle it to be issued the licence, or any other licence; and
- (c) that the successful applicant is aware that the fact that the successful applicant is the highest bidder at the Licence Allocation Exercise for the licence does not, of itself, entitle the successful applicant to be issued the licence; and
- (d) that the successful applicant is aware that the licence for which it is the successful applicant will not be issued to it if the winning price is not paid by the successful applicant; and
- (e) that the successful applicant is aware that it may be liable to the ACMA in damages for any loss suffered by the ACMA as a result of conduct of the successful applicant or its authorised agent.

Note 1: A *successful applicant* is defined in subsection 5(1).

Note 2: See section 41 regarding an applicant's liability.

### **24 Acknowledgment not lodged**

If the successful applicant for an HPON licence does not comply with section 23, the successful applicant ceases to be the successful applicant for the licence.

## 25 Payment of winning price

- (1) The successful applicant for an HPON licence must pay the winning price no later than 10 business days after the Licence Allocation Exercise for the licence was closed.
- (2) If the successful applicant for an HPON licence does not comply with subsection (1), the successful applicant ceases to be the successful applicant for the licence at the end of the tenth business day after the Licence Allocation Exercise for the licence was closed.

## 26 Issue of licence

Subject to sections 33 and 36, the ACMA must issue an HPON licence to the successful applicant for the licence as soon as reasonably practicable after the successful applicant complies with both section 23 and subsection 25(1).

Note: Under the *Radiocommunications (Transmitter Licence Tax) Act 1983* and the *Radiocommunications Taxes Collection Act 1983*, a tax is imposed on the issue of a transmitter licence and is payable by the holder of the licence.

## **Part 5—Allocation of licence if there is only one registered applicant**

### **27 Application of Part 5**

This Part applies if:

- (a) at the closing date and time for an HPON licence, there is only one registered applicant for the licence; or
- (b) section 20 applies in relation to an HPON licence.

### **28 Notice to successful applicant**

Before the end of 5 business days after the closing date and time for applications for an HPON licence, the ACMA must give the successful applicant for the licence a notice setting out:

- (a) that the successful applicant is the only registered applicant for the licence; and
- (b) the amount of the reserve price for the licence; and
- (c) the account into which the reserve price must be paid; and
- (d) the last day when the successful applicant may pay the reserve price and lodge an acknowledgment which complies with paragraph 29(b); and
- (e) the last day when the successful applicant may withdraw its application.

Note: A *successful applicant* is defined in subsection 5(1).

### **29 Payment of reserve price and acknowledgment**

Unless a successful applicant for an HPON licence withdraws its application in accordance with section 32, on or before the day notified under paragraph 28(d) the successful applicant must:

- (a) pay the reserve price for the licence; and
- (b) lodge with the ACMA a written acknowledgment of the following:
  - (i) that the successful applicant has relied solely on:
    - (A) its own skill, judgment and investigations; and
    - (B) the skill, judgment and investigations of persons acting on its behalf; in applying for the licence, and in forming its opinion of the value of the licence; and
  - (ii) that the successful applicant is aware that becoming the successful applicant does not entitle it to be issued the licence, or any other licence; and
  - (iii) that the successful applicant is aware that the fact that they are the only registered applicant for the licence does not, of itself, entitle the successful applicant to be issued the licence, or any other licence; and
  - (iv) that the successful applicant is aware that the licence will not be issued to them if the reserve price is not paid by the successful applicant; and
  - (v) that the successful applicant is aware that it may be liable to the ACMA in damages for any loss suffered by the ACMA as a result of conduct of the successful applicant or its authorised agent.

Note 1: A *successful applicant* is defined in subsection 5(1).

Note 2: See section 41 regarding an applicant's liability.

### **30 Reserve price not paid or acknowledgment not lodged**

If the successful applicant for an HPON licence fails to comply with section 29 in relation to the licence, the successful applicant ceases to be the successful applicant for the licence.

### **31 Issue of licence**

Subject to sections 33 and 36, the ACMA must issue an HPON licence to the successful applicant for the licence as soon as reasonably practicable after the successful applicant has complied with section 29.

Note: Under the *Radiocommunications (Transmitter Licence Tax) Act 1983* and the *Radiocommunications Taxes Collection Act 1983*, a tax is imposed on the issue of a transmitter licence and is payable by the holder of the licence.

### **32 Withdrawal of application**

A registered applicant may withdraw its application for a licence by lodging a notice with the ACMA to that effect on or before the day notified under paragraph 28(e).

## Part 6—Miscellaneous

### 33 Termination of proposed issue of a licence

The ACMA may terminate the issue of an HPON licence at any time before the licence is issued.

### 34 Refund of reserve price or winning price

If the ACMA terminates the issue of an HPON licence, the ACMA must refund:

- (a) any part of the reserve price for the licence paid under paragraph 29(a); and
- (b) any part of the winning price for the licence paid under subsection 25(1).

### 35 New Licence Allocation Exercise and re-offer of licence

- (1) If, at the closing date and time for an HPON licence, there are no registered applicants for the licence, the ACMA may publish another notice under subsection 8(1) for the licence.
- (2) If a Licence Allocation Exercise (the *relevant Exercise*) for an HPON licence commences, and the relevant Exercise is terminated before it ends, the ACMA may decide that a new Licence Allocation Exercise will be conducted for the licence.
- (3) If the ACMA makes a decision under subsection (2):
  - (a) the ACMA must announce to registered applicants the time the new Licence Allocation Exercise commences; and
  - (b) Part 4 (other than sections 16, 17 and 18) applies to the new Licence Allocation Exercise; and
  - (c) a registered applicant for the licence continues to be a registered applicant for the licence, and is not required to re-apply or pay another application fee; and
  - (d) an authorised agent of a registered applicant for the allocation of the licence continues to be an authorised agent of a registered applicant for the allocation of the licence; and
  - (e) the reserve price for the licence remains in force.
- (4) If:
  - (a) the successful applicant for an HPON licence ceases to be the successful applicant; or
  - (b) an HPON licence is not issued to the successful applicant for the licence; or
  - (c) the issue of an HPON licence is terminated;the ACMA may publish another notice under subsection 8(1) for the licence.
- (5) If the ACMA publishes another notice under subsection 8(1) for an HPON licence:
  - (a) subject to paragraphs (b) and (c), sections 8, 13, 14 and 15 must be complied with as if a notice had not previously been published; and
  - (b) subject to subsection (6), a registered applicant for the licence continues to be a registered applicant for the licence, and is not required to re-apply or pay another application fee; and
  - (c) subject to subsection (6), an authorised agent of a registered applicant for the allocation of the licence continues to be an authorised agent of the applicant for the allocation of the licence; and
  - (d) the application fee and reserve price for the licence remain in force.

- (6) If the ACMA publishes another notice under subsection 8(1) for an HPON licence because the successful applicant (the *former successful applicant*) did not comply with section 23, subsection 25(1) or section 29:
  - (a) the former successful applicant ceases to be a registered applicant for the licence;
  - (b) an authorised agent of the former successful applicant for the allocation of the licence ceases to be an authorised agent of the former successful applicant for the allocation of the licence; and
  - (c) the former successful applicant may not apply for the licence under section 13.

### 36 Licence not to be issued in certain circumstances

The ACMA must not issue a licence to an applicant if:

- (a) the licence is inconsistent with the spectrum plan; or
- (b) the licence is inconsistent with a frequency band plan.

### 37 Commencement and duration of a licence

- (1) If an HPON licence is allocated and issued in accordance with this instrument, the ACMA must not specify in the licence, for the purposes of subsection 103(1) of the Act, that the licence comes into force on a day later than the day the licence was issued.
- (2) If an HPON licence is allocated and issued in accordance with this instrument, the ACMA must specify in the licence, for the purposes of subsection 103(2) of the Act, the shorter of the following periods:
  - (a) the period that commences when the licence is issued and ends when the period that is specified in the section 34 determination that allows the ACMA to issue the licence ends;
  - (b) 20 years.

### 38 Extension of time

- (1) The ACMA may extend the period in which an applicant is required to do any thing required by this instrument, whether or not the period has expired.
- (2) If the day for doing any thing under this instrument is not a business day, the thing is to be done on the next business day following that day.

Note: A *business day* is defined in subsection 5(1).

### 39 Notices

- (1) A notice to be given to an applicant by the ACMA is taken, for all purposes, to have been given to the applicant if it is given to a person who is the applicant's authorised agent or who is specified by the applicant in its application as a contact person to whom notices may be given.
- (2) A notice must be in writing, and may be given by email.

### 40 Lodgment

The ACMA must specify in writing the manner in which, a person must *lodge* a form under this instrument.

Note: The ACMA may specify these matters in a written notice or other material supplied by the ACMA to a person.

#### **41 Liability of person etc for failure to comply**

This instrument does not affect any right of the ACMA to recover damages (including damages of an amount greater than the amount of the winning price) from a successful applicant, or any other person, for:

- (a) a failure by the successful applicant to comply with section 23 or 29; or
- (b) a failure by the successful applicant to pay the winning price for the licence as specified in subsection 25(1).

#### **42 ACMA may appoint agent**

The ACMA may at any time appoint, in writing, one or more persons as its agent or agents for any of the following purposes:

- (a) receiving applications;
- (b) conducting a Licence Allocation Exercise;
- (c) accepting and holding in trust, on behalf of the Commonwealth, the following payments:
  - (i) application fees;
  - (ii) the reserve price for a licence;
  - (iii) the winning price for a licence.