

EXPOSURE DRAFT



EXPOSURE DRAFT

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

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

Dated 2023

[DRAFT ONLY—NOT FOR SIGNATURE]

Member

[DRAFT ONLY—NOT FOR SIGNATURE]

Member/General Manager

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Part 1—Preliminary

1 Name

This instrument is the *Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

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 9;
- (b) paragraphs 21(c) and (d);
- (c) paragraphs 24(1)(a) and (c);
- (d) Division 7 of Part 5;
- (e) subsection 71(7);
- (f) section 110;
- (g) section 129;
- (h) sections 141, 142 and 145.

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Section 4

4 Interpretation

Note 1: A number of 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.

Note 2: In this instrument, *register* has a different meaning to that given to Register by section 5 of the Act.

(1) In this instrument:

3.4/3.7 GHz bands means the following parts of the spectrum:

- (a) the 3.4 GHz band;
- (b) the 3.7 GHz band.

3.4 GHz auction: see paragraph 11(1)(c).

3.4 GHz band means the part of the spectrum from 3400 MHz to 3575 MHz.

3.4 GHz product has the same meaning as in the marketing plan.

3.7 GHz auction: see paragraph 11(1)(b).

3.7 GHz band means the part of the spectrum from 3700 MHz to 3800 MHz.

3.7 GHz product has the same meaning as in 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.

allocation limits: see sections 12 and 13.

allocation period: see subsection 11(3).

allocation process has the meaning given by subsection 11(2).

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

Note: A person may apply under section 33, 44 or 49.

applicant information package: see subsection 26(1).

application deadline: see subsection 20(1).

application fee: see section 19.

application form: see paragraph 22(1)(a).

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

area, in relation to a product, means the geographic area of the region for the product.

Note: The regions for the products are set out in the marketing plan.

assignment bid: see subsection 138(2).

assignment bidder: see subsection 137(2).

assignment price: see section 142.

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

assignment stage means the part of an auction:

- (a) commencing at the start of the first assignment round of the auction; and
- (b) ending immediately after the auction manager provides the results for every assignment round in accordance with section 146.

assignment winner: see subsection 141(4).

associate: see subsection 15(1).

auction means the 3.7 GHz auction or the 3.4 GHz auction.

auction manager: see section 18.

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

balance of the total winning price: see section 85.

bidder means a person registered by the ACMA as a bidder under section 53.

bid increment percentage:

- (a) in relation to the primary stage of an auction—see section 92; or
- (b) in relation to the secondary stage of an auction—see section 114.

clock price, for a lot of a product for a clock round, means the sum of the following, rounded up to the nearest hundred:

- (a) the opening price for the lots of the product;
- (b) the bid increment percentage for the lots of the product multiplied by that opening price.

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clock round means a round for bids in the primary stage of an auction.

confidential information: see section 27.

continue bid: see subsection 124(2).

decrease bid has the meaning given by subsection 101(7).

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 paragraph 101(8)(b).

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.

deed of acknowledgement form: see paragraph 22(1)(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.

deed of confidentiality form: see paragraph 22(1)(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 22(1)(c).

demand change has the meaning given by subsection 105(8).

eligibility deadline: see subsection 20(2).

eligibility nomination form: see paragraph 22(1)(e).

eligibility payment: see subsection 40(2).

eligibility points for a bidder at a time: see section 103.

eligibility requirement percentage: see subsection 93(1).

entry, during a pre-bidding round, means an entry in the auction system made by a bidder under subsection 99(1) or 122.

excess demand: see subsection 105(6).

exit bid: see subsection 124(3).

extended eligibility deadline: see paragraph 24(2)(b).

final clock round: see section 108.

final high bid: see subsection 126(3).

final round, for a lot: see subsection 126(1).

increase bid has the meaning given by subsection 101(5).

last round of the secondary stage: see subsection 127(2).

leftover lot has the same meaning as in the marketing plan.

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

lot has the same meaning as in the marketing plan.

lot bandwidth has the same meaning as in the marketing plan.

lot rating for a lot of a product means the lot rating set by the ACMA under paragraph 21(a), as varied under paragraph 24(1)(b).

maintain bid has the meaning given by subsection 101(3).

marketing plan means the *Radiocommunications Spectrum Marketing Plan (3.4/3.7 GHz Bands) 2023*.

metropolitan product has the same meaning as in the marketing plan.

new application deadline: see paragraph 24(2)(a).

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

- (a) for the first clock round—the starting price for a lot of the product; or
- (b) for any clock round other than the first clock round—the posted price for a lot of the product for the previous clock round.

Note: For starting prices, see paragraph 21(1)(d) or 24(1)(a).

posted demand, for a bidder for lots of a product for a clock round, has the meaning given by subsection 105(7).

posted price, for a lot of a product for a clock round, has the meaning given by subsection 105(5).

pre-bidding round, for the primary stage or the secondary stage of an auction, means a round described in paragraph 57(2)(a) (for the primary stage) or 57(3)(a) (for the secondary stage).

Note: See also section 75 for the scheduling of the pre-bidding round of the primary stage and subsection 115(3) for the scheduling of the pre-bidding round of the secondary stage.

primary price: see section 110.

primary stage means the part of an auction:

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- (a) commencing at the start of the pre-bidding round; and
- (b) ending immediately after the auction manager provides the results for the final clock round in accordance with sections 111 and 112.

primary winner: see subsection 108(3).

processing algorithm: see section 105.

product has the same meaning as in the marketing plan.

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—3.4 GHz and 3.7 GHz Bands) Declaration 2022*.

regional product has the same meaning as in the marketing plan.

register means the register of bidders maintained by the ACMA under section 54.

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 group of persons: see subsections 15(3) and 15(4).

relevant spectrum means the part of the spectrum from 3400 MHz to 3800 MHz.

residual lot: see subsection 113(2).

residual price: see subsection 129(2).

round, for the secondary stage of an auction, means a round for bids in the secondary stage of the auction.

secondary price: see subsection 129(1).

secondary stage means the rounds of the auction:

- (a) commencing with the start of the pre-bidding round; and
- (b) ending immediately after the auction manager provides the results for the final round of the secondary stage in accordance with sections 130 and 131.

secondary winner: see subsections 126(2).

set price, for a leftover lot, means the price set by the ACMA under paragraph 21(c), as varied under paragraph 24(1)(c).

specified price: see subsection 124(4).

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

- (a) for the first clock round—has the meaning given by subsection 99(4); and
- (b) for a clock round other than the first clock round—means the posted demand of the bidder for the lots of the product for the previous clock round.

starting price for a lot of a product means the price set by the ACMA under paragraph 21(d), as varied under paragraph 24(1)(a).

Note: See section 91 and the marketing plan.

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

total assignment price: see section 145.

unused allocation limit has the meaning given by section 14.

updated eligibility nomination form: see paragraph 24(2)(c).

winning bidder: see subsection 64(1).

winning price: see subsection 64(2).

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.

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

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

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

5 References to other instruments

In this instrument:

- (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.

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Note 3: See section 314A of the Act.

6 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 as an attachment, in accordance with subsection (2), to the email address specified in the applicant information package; or
 - (c) uploading the document to an online database administered by the ACMA, in accordance with subsection (2).

Note: Subsection 40(4) has additional requirements for a deed of financial security given by email.

- (2) If a document is emailed or uploaded the document must be:
 - (a) if the document is a statutory declaration, statement under section 69 or deed—in a PDF format or another format approved by the auction manager; or
 - (b) 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 paragraphs (2)(a) and (b).
- (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.

7 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.

8 Signing or executing documents other than deeds and statutory declarations

- (1) A document that is required or permitted to be given to the ACMA or the auction manager under this instrument may be signed or executed electronically if:
 - (a) the document must be signed or executed; and
 - (b) the document is not a statutory declaration or a deed.
- (2) If:

- (a) this instrument permits or requires a person to give the ACMA or the auction manager a document; and
- (b) the document is not a statutory declaration or a deed; and
- (c) the document must be signed or executed; and
- (d) the signature or execution must be witnessed;

then the signature or execution may be witnessed by audio-visual link, if the person witnessing the signature or execution (the *witness*):

- (e) observes the person signing or executing the document (the *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.

9 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 paid 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 total winning price—BPAY payment:
 - (i) only if, under Division 7 of Part 5, a winning bidder has been notified by the ACMA of the bidder's balance of the total winning price; and
 - (ii) using the electronic payment scheme called BPAY, operated in cooperation between Australian financial institutions, which enables a person to make a payment as a participant in BPAY, either via telephone or internet access;

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- (c) for a winning bidder's balance of the total winning price—credit card payment:
 - (i) only if, under Division 7 of Part 5, a winning bidder has been notified by the ACMA of the bidder's balance of the total 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.
- (7) If an amount payable under this instrument is an amount of dollars and cents, the amount is to be rounded up to the nearest whole 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: 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.

Note: This section also applies to spectrum access charges payable under section 294 of the Act. As such, this section relates to Division 7 of Part 5 of this instrument and is disallowable under section 42 of the *Legislation Act 2003*.

10 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 a bidder of a matter, whether or not in writing, the auction manager may give the information to the bidder, or notify 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 a bidder of a matter, by using the auction system.

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Part 2—Allocation of spectrum licences

Division 1—How spectrum licences will be allocated

11 The allocation process

- (1) The procedure for the allocation of spectrum licences in the 3.4/3.7 GHz bands is:
 - (a) a direct allocation of leftover lots (see Division 1 of Part 5); and
 - (b) an auction (the **3.7 GHz auction**) of the lots of the 3.7 GHz products; and
 - (c) an auction (the **3.4 GHz auction**) of the lots of the 3.4 GHz products; and
 - (d) as part of the assignment stage of the 3.4 GHz auction, an allocation of any leftover lots that were not directly allocated under Division 1 of Part 5.
- (2) The **allocation process** is the process comprising the steps set out in subsection (1).
- (3) The **allocation period** is the period:
 - (a) commencing on the eligibility deadline; and
 - (b) ending immediately after the auction manager provides the results for the allocation process in accordance with section 83.

Division 2—General allocation limits

12 Allocation limits

- (1) The allocation of spectrum licences under this instrument must not result in a person, or relevant group of persons, being authorised to operate a radiocommunications device in a part of the relevant spectrum in an area that exceeds the allocation limit for the area.

Note: Relevant spectrum is the part of the spectrum from 3400 MHz to 3800 MHz: see subsection 4(1).

Meaning of allocation limit

Option 1—for consultation

- (2) The **allocation limit** for the area of a metropolitan product or regional product is 140 MHz of spectrum.

Option 2—for consultation

- (2) The **allocation limit** is:
 - (a) for the area of a metropolitan product—140 MHz of spectrum; and

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Part 2 Allocation of spectrum licences

Division 2 General allocation limits

Section 12

(b) for the area of a regional product—160 MHz of spectrum.

Authorisation that covers part of an area taken to cover all of it

- (3) In applying an allocation limit, an authorisation to operate a radiocommunications device in a part of the relevant spectrum in a part of the area of a metropolitan product or a regional product is taken to be an authorisation to operate a radiocommunications device in that part of the relevant spectrum in the whole of the area of the product.

Applying allocation limits during bidding—assume all bids successful

- (4) In determining for the purposes of this instrument whether a bid at a time in an auction would result in a person exceeding an allocation limit in an area, assume that the bidder will be issued a spectrum licence for the lot bandwidth (expressed in MHz) and area of the lots described in column 2 of the item of the following table applicable to that time in the auction:

Item	Column 1 Time in auction	Column 2 Assume that the bidder will be issued a spectrum licence for the lot bandwidth (expressed in MHz) and area of the following lots:
1	a clock round in the primary stage of the 3.7 GHz auction	all lots the bidder bids for in the clock round
2	a round in the secondary stage (if any), of the 3.7 GHz auction	(a) all lots the bidder bids for in the round; and (b) all lots allocated to the bidder in the primary stage of the auction
3	a clock round in the primary stage of the 3.4 GHz auction	(a) all lots the bidder bids for in the clock round (other than a lot of the product known as Regional WA Central Middle (see item 34 of Schedule 2 to the marketing plan)); and (b) all lots allocated to the bidder in the primary stage or secondary stage (if any) of the 3.7 GHz auction
4	a round in the secondary stage (if any), of the 3.4 GHz auction	(a) all lots the bidder bids for in the round (other than a lot of the product known as Regional WA Central Middle (see item 34 of Schedule 2 to the marketing plan)); and (b) all lots allocated to the bidder in the primary stage of the auction; and (c) all lots allocated to the bidder in the primary stage or secondary stage (if any) of the 3.7 GHz auction

Note: This is modified during the processing of bids: see subsection 106(3).

Third party use

- (5) In applying this section, and sections 13 and 14, disregard an authorisation under subsection 68(1) of the Act (about third party use).

13 Certain existing spectrum licences disregarded

- (1) This section is about applying, to a person, the allocation limit for the area (the *product area*) of a particular metropolitan product or regional product if there is at least one overlapping spectrum licence for the person and the product area.

Spectrum licences that overlap with the product area

- (2) In this section, a spectrum licence is an *overlapping spectrum licence* for a person and a product area if:
- (a) the person, or another person in the same relevant group of persons as the person, is authorised under the spectrum licence to operate a radiocommunications device in a part of the relevant spectrum; and
 - (b) all or part of the area covered by the licence (the *overlap area*) falls within the product area.

Note: Authorisations under subsection 68(1) of the Act are to be disregarded: see subsection 12(5).

Bandwidth disregarded if it reaches less than 30% of the population of the product area

- (3) A particular overlapping spectrum licence (the *test licence*) is disregarded in applying section 12 in relation to the person and the product area if the population worked out under subsection (4) or (5) (as the case requires) for the test licence is less than 30% of the population of the product area.

If there is only one overlapping spectrum licence

- (4) If the test licence is the only overlapping spectrum licence for the person and the product area, then the population worked out for the purposes of subsection (3) for the test licence is the population of the overlap area for the test licence.

If there are 2 or more overlapping spectrum licences

- (5) If there are 2 or more overlapping spectrum licences for the person and the product area, then the population worked out for the purposes of subsection (3) for the test licence is the sum of:
- (a) the population of the overlap area for the test licence; and
 - (b) the population of the overlap area for each other overlapping spectrum licence for the person and the product area that authorises an amount of spectrum (expressed in MHz) that is equal to or greater than the amount of spectrum (expressed in MHz) authorised by the test licence.

Note: If there is an overlapping spectrum licence for the person and the product area, and that licence is not disregarded under subsection (3), then the amount of spectrum (expressed in MHz) authorised by that licence is taken to be authorised in the whole of the product area: see subsection 12(3).

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Section 14

Section operates on a product-by-product basis

- (6) The operation of this section in relation to a test licence and a product area is of no effect in relation to the area of any other metropolitan product or regional product, including the area of another metropolitan product or regional product that overlaps with the product area.
- (7) Nothing in subsection (6) prevents the separate operation of this section in relation to the test licence and the area of another metropolitan product or regional product.

Bandwidth allocated in 3.7 GHz auction may be disregarded by this section

- (8) In applying this section to a person after the end of the 3.7 GHz auction, assume that the person has been issued a spectrum licence for the lot bandwidth (expressed in MHz) and area of all lots allocated to the person in the primary stage or secondary stage (if any) of the auction.

Method for working out population of a geographic area

- (9) The total population of a geographic area is to be 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 this instrument commences.

Note 1: The HCIS—List of Population Data document may be accessed, free of charge, from the ACMA's website at www.acma.gov.au.

Note 2: An area may be described by reference to identifiers referred to in the marketing plan.

14 Unused allocation limit

- (1) The **unused allocation limit** for a bidder for a metropolitan product or regional product is the allocation limit for the area of the product, reduced (but not below zero) by the amount of relevant spectrum (expressed in MHz) (if any) in the area in which the bidder, or a person in the same relevant group of persons as the bidder, is already authorised to operate a radiocommunications device.

Note 1: The unused allocation limit is entered on the register of bidders (see section 54) and in the auction system (see section 96). A bid is invalid if it exceeds the unused allocation limit: see paragraph 101(4)(c).

Note 2: Authorisations under subsection 68(1) of the Act are to be disregarded: see subsection 12(5).

- (2) Subsections 12(3) and 13(3) apply in determining the unused allocation limit in the same way those subsections apply in applying the allocation limit.

Bandwidth allocated in 3.7 GHz auction affects unused allocation limit for 3.4 GHz auction

- (3) In applying this section to a bidder after the end of the 3.7 GHz auction, assume that the bidder has been issued a spectrum licence for the lot bandwidth

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(expressed in MHz) and area of all lots allocated to the person in the primary stage or secondary stage (if any) of the 3.7 GHz auction.

Apportionment of unused allocation limit where bidders are affiliated before the start of the 3.4 GHz auction

- (4) If section 72 (about affiliations that affect the unused allocation limit for the 3.4 GHz auction) applies to 2 or more persons, the **unused allocation limit** for a metropolitan product or regional product for each of those bidders immediately before the start of the pre-bidding round of the primary stage of the 3.4 GHz auction is calculated by:
- (a) starting with the smallest limit calculated for any of those bidders under subsection (1) for the product; and
 - (b) apportioning that limit between the affiliated bidders in the manner determined under section 72.

15 Meaning of *associate* and *relevant group of persons*

- (1) Each of the following is an **associate** in relation to a person:
- (a) in relation to a body corporate:
 - (i) a director or secretary of the body;
 - (ii) a related body corporate;
 - (iii) a director or secretary of a related body corporate;
 - (iv) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body;
 - (b) in relation to an individual:
 - (i) the individual's spouse;
 - (ii) the individual's de facto partner within the meaning of the *Acts Interpretation Act 1901*;
 - (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;
 - (iv) where the individual is a director or secretary of a body corporate—the body corporate and any related body corporate;
 - (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 the purposes of 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

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(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;

but does not include:

(d) 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*; or

(e) an agreement that, to the extent it deals with a part of the spectrum referred to in the re-allocation declaration, deals only with spectrum associated with left-over lots.

(3) In this instrument, **relevant group of persons** means:

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

(b) subject to subsection (4), any 2 or more groups referred to in paragraph (a) that have at least one member in common.

(4) For the purposes of paragraph (3)(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 group;

(b) the individual is providing the company secretarial services through a person or entity (the **third party service provider**) that:

(i) is not a member of 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 the related groups, under a contract or other legally binding arrangement, to provide the company secretarial services;

(c) the individual is not, other 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.

(5) In this section:

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

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

roaming services agreement means an agreement between 2 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.

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

17 Information relevant to considering whether applicants or bidders are affiliated

- (1) When considering whether 2 or more applicants or bidders are affiliated, the ACMA must have regard to the following:
 - (a) completed application forms;
 - (b) updated application forms;
 - (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.

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Part 3 Arrangements to be made by the ACMA

Division 1 Key settings and deadlines

Section 18

Part 3—Arrangements to be made by the ACMA

Division 1—Key settings and deadlines

18 The ACMA must appoint auction manager

- (1) The ACMA must, in writing, appoint a person (the *auction manager*) to manage the allocation process.
- (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.

19 The ACMA must set application fee

Before it publishes a notice under subsection 25(1), the ACMA must, in writing, set a fee (*application fee*) to be paid by applicants.

Note: Section 34 is about when the application fee is refundable.

20 The ACMA must set application deadline and eligibility deadline

- (1) Before it publishes a notice under subsection 25(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 25(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.

21 The ACMA must set lot ratings, eligibility point value and certain prices

The ACMA must set the following:

- (a) a rating (expressed as a number of eligibility points) (the *lot rating*) that represents an estimate of the value of each lot of a product in the allocation process;
- (b) the dollar value of each eligibility point for the allocation process;
- (c) the set price for each leftover lot;

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Arrangements to be made by the ACMA **Part 3**
Key settings and deadlines **Division 1**

Section 22

- (d) the price for a lot of each product for the first clock round (the *starting price*).

Note: Paragraphs (c) and (d) relate to Division 7 of Part 5 of this instrument for the purposes of section 294 of the Act, and are disallowable under section 42 of the *Legislation Act 2003*.

22 The ACMA must approve forms

- (1) After setting the amounts in section 21, the ACMA must approve the following forms:
 - (a) a form (*application form*) for applying to participate in the allocation process;
 - (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 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 28 ceases to apply to the person;
 - (e) a form (an *eligibility nomination form*) for applying for eligibility points and to be allocated leftover lots;
 - (f) one or more forms for the purposes of section 36, paragraph 44(5)(c), and sections 51 and 69 (which are about statutory declarations and statements).

Requirements for eligibility nomination form

- (2) A form approved for the purposes of paragraph (1)(e) or 24(2)(c) must include:
 - (a) a guide to securing eligibility points; and
 - (b) a guide to applying to be allocated a leftover lot.

23 The ACMA must provide initial auction information to applicants

As soon as practicable 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 round for the primary stage and secondary stage;
- (c) information about making bids in the auction system during the primary stage, secondary stage and assignment stage.

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Part 3 Arrangements to be made by the ACMA

Division 2 Advertising the allocation process

Section 24

24 The ACMA may vary prices and lot ratings

Varying starting prices, lot ratings and set prices

- (1) Not less than 5 working days before the eligibility deadline, the ACMA may do one or more of the following:
 - (a) vary a starting price set under paragraph 21(d);
 - (b) if a starting price is varied, vary a lot rating set under paragraph 21(a);
 - (c) vary a set price for a leftover lot set under paragraph 21(c).

Note 1: Varying a starting price or a set price relates to Division 7 of Part 5 of this instrument for the purposes of section 294 of the Act. Accordingly, paragraphs (1)(a) and (c) are disallowable under section 42 of the *Legislation Act 2003*.

Note 2: See Division 5 of Part 4 for the rules about updating application documents and inviting new applications if ACMA exercises this power.

- (2) If the ACMA exercises a power under subsection (1), 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*); and
 - (c) approve a form (an *updated eligibility nomination form*) for applying for eligibility points and to be allocated leftover lots.
- (3) The new application deadline must be at least 20 working days after the day the ACMA exercised the power.
- (4) The extended eligibility deadline must be at least 30 working days after the new application deadline.
- (5) The updated eligibility nomination form must comply with subsection 22(2).
- (6) As soon as practicable after exercising a power under subsection (1), the ACMA must publish on its website a notice setting out the following:
 - (a) if a starting price was varied—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 the set price for a leftover lot was varied—the details of the variation of the set price;
 - (d) the date and time of the new application deadline;
 - (e) the date and time of the extended eligibility deadline.

Division 2—Advertising the allocation process

25 Notice advertising allocation process

- (1) The ACMA must publish on its website a notice that:
 - (a) describes the parts of the spectrum to be allocated; and

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Arrangements to be made by the ACMA **Part 3**
Advertising the allocation process **Division 2**

Section 26

- (b) gives a brief description of the way the allocation process will be conducted; and
 - (c) states that the allocation process will be conducted in accordance with this instrument; and
 - (d) invites persons to apply to the ACMA to take part in the allocation process; 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 allocation process can be obtained from the ACMA's website at the electronic address given in the notice.
- (2) If a matter mentioned in the notice changes, the ACMA must publish another notice giving details of the change on its website.
- (3) The ACMA may publish the information required by subsections (1) and (2) by additional methods, and may publish other information about the auction by any method.

26 Applicant information package

- (1) The *applicant information package* must contain the following documents and information:
- (a) the re-allocation declaration;
 - (b) the marketing plan;
 - (c) this instrument;
 - (d) a guide to the allocation process;
 - (e) the starting price for the lots of each product in the allocation process;
 - (f) the dollar value of each eligibility point for the allocation process;
 - (g) the lot rating for the lots of each product in the allocation process;
 - (h) the set price for each leftover lot;
 - (i) the application form;
 - (j) the deed of acknowledgement form;
 - (k) the deed of confidentiality form;
 - (l) the eligibility nomination form;
 - (m) the amount of the application fee;
 - (n) the application deadline, and information about the circumstances in which there may be a new application deadline;
 - (o) each form approved by the ACMA under subsection 22(1);
 - (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 allocation process;

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Part 3 Arrangements to be made by the ACMA

Division 2 Advertising the allocation process

Section 26

- (r) the physical address for giving documents to the ACMA;
 - (s) the email address for giving documents to the ACMA;
 - (t) the online web address for the submission of forms.
- (2) The applicant information package may also contain other information about the allocation process.
- (3) The ACMA must publish the applicant information package on its website as soon as practicable after notice of the allocation process is published under subsection 25(1).
- (4) If the ACMA makes any change to the contents of the applicant information package after it is published, the ACMA must publish a notice giving details of the change on its website.

Part 4—Applying to participate

Division 1—Confidentiality

27 Meaning of *confidential information*

- (1) Each of the following is *confidential information* for an applicant or bidder:
 - (a) documents the applicant or bidder has given to the ACMA for the purposes of the allocation process;
 - (b) information provided to the applicant under any of the following sections, for the purpose of participating in the allocation process:
 - (i) section 23 (auction information for applicants);
 - (ii) section 45 (auction information for new applicants);
 - (iii) section 50 (auction information for new applicants when starting prices change);
 - (c) information provided to the bidder under paragraphs 53(3)(d) (information about which leftover lots have been taken up);
 - (d) information provided to the bidder under paragraphs 53(3)(e) and (f) (information about using the auction system), for the purpose of participating in the auction;
 - (e) for a bidder:
 - (i) the bidder's start demand for a clock round of the primary stage;
 - (ii) the bidder's posted demand for a clock round of the primary stage;
 - (iii) a bid made by the bidder in an auction;
 - (f) a proposed bid by the applicant or bidder, or a bid under consideration by the applicant or bidder;
 - (g) a proposed start demand of the applicant or bidder, or a proposed start demand under consideration by the applicant or bidder;
 - (h) the bidding strategy of the applicant or bidder;
 - (i) 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 3.4/3.7 GHz bands;
 - (j) information about the terms of agreements, or possible future agreements, affecting the use of relevant spectrum, to the extent the agreements:
 - (i) relate to authorisations that are, or would be, permitted by section 68 of the Act; or
 - (ii) relate to assignments made, or to be made, under section 85 of the Act; or
 - (iii) deal with spectrum that is available in this allocation process;
 - (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

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Part 4 Applying to participate

Division 1 Confidentiality

Section 28

- (ii) start demands or proposed start demands of another applicant or bidder; or
 - (iii) the bidding strategy of another applicant or bidder;
 - (1) information that, if disclosed, could be reasonably expected to affect, or be capable of affecting, the outcome of the auction.
- (2) Despite subsection (1), the mere fact that a bidder applied (or did not apply) to be directly allocated a leftover lot under Division 1 of Part 5 is not **confidential information** for that bidder.

28 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 to any person:
- (a) the applicant or bidder;
 - (b) a related person of the applicant or bidder;
 - (c) a contractor of an applicant or bidder.
- (2) Subsection (1) does not prevent a person disclosing information:
- (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 required or 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 32.

- (3) Subsection (1) does not prohibit a person disclosing information if the information is already publicly available.

29 Duration of confidentiality obligation

- (1) Section 28 applies in relation to a person until the ACMA announces or publishes the information mentioned in subsection 90(1) (information about the allocation results).

Note: The ACMA announces or publishes the information mentioned in subsection 90(1) only after winning bidders for the allocation process are notified in accordance with subsection 90(2).

- (2) However, if an applicant or bidder withdraws its application, section 28 applies in relation to the applicant or bidder, a related person of the applicant or bidder, or a contractor of the applicant or bidder until the applicant is notified by the ACMA under section 81 that the applicant's confidentiality obligation has ended.

30 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 28; or
- (b) receives information that is confidential information for 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.

31 Notice of breach of confidentiality

- (1) This section applies if the ACMA reasonably believes 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 28; or
 - (b) received confidential information as a result of a breach of section 28.
- (2) In relation to the applicant or bidder whose confidential information has been disclosed, the ACMA must:
- (a) notify, in writing, 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 allocation period, the ACMA is not required to act under subsection (2) before the allocation period ends, but must act under that subsection as soon as practicable after the allocation period ends.

32 Deeds of confidentiality—related persons and contractors

- (1) A person must give the ACMA a deed of confidentiality if:
- (a) the person is a related person of an applicant or bidder; and
 - (b) the person has knowledge of confidential information of the applicant or bidder; and
 - (c) the person is either or both of the following:
 - (i) an employee of the applicant or bidder;

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Part 4 Applying to participate

Division 2 Applying to be registered

Section 33

- (ii) an employee of a related body corporate of the applicant or bidder that provides services to the applicant or bidder.
- (2) A person must give the ACMA a deed of confidentiality if:
 - (a) the person is a contractor of an applicant or bidder; and
 - (b) the person has knowledge of confidential information of the applicant or bidder.
- (3) Subsection (2) does not apply to a contractor engaged:
 - (a) for the sole purpose of providing, in the contractor's professional capacity, advice relating to the auction; or
 - (b) for the sole purpose of obtaining finance to make a payment in relation to the auction.
- (4) If a person to whom subsection (1) or (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 published on the ACMA's website: see paragraphs 25(1)(h) and 26(1)(k).

Division 2—Applying to be registered

33 Applying to be registered as a bidder

- (1) A person who wishes to do one or more of the following may apply to become registered as a bidder in the allocation process:
 - (a) bid in the 3.7 GHz auction;
 - (b) bid in the 3.4 GHz auction;
 - (c) be directly allocated a leftover lot.

Note: A person who is registered as a bidder in the allocation process may, subject to allocation limits and eligibility points, bid in either or both of the 3.4 GHz auction and the 3.7 GHz auction.

- (2) A person applies by doing all of the following before the application deadline:
 - (a) giving the ACMA a completed application form;
 - (b) giving the ACMA a deed of acknowledgement executed by the applicant;
 - (c) giving the ACMA a deed of confidentiality executed by the applicant;
 - (d) paying the application fee.

Note 1: For information on how an application fee must be paid, see section 9.

Note 2: An applicant may withdraw its application before the eligibility deadline or extended eligibility deadline: see subsection 52(1).

Updating documents

- (3) An applicant who has given the ACMA a document covered by paragraph (2)(a), (b) or (c) before the application deadline may give the ACMA an updated,

additional or replacement version of the document at any time until the application deadline, but not after the application deadline.

34 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 allocation process; or
 - (b) if the applicant or bidder is taken to withdraw from the allocation process; or
 - (c) if the applicant or bidder is not permitted to make a bid in the 3.4 GHz auction or the 3.7 GHz auction.
- (2) An application fee paid by an applicant under this instrument is refundable if both the following occur:
 - (a) the ACMA exercises a power under section 24 (about varying key settings);
 - (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.

35 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.

Note: Before the application deadline, an applicant may give the ACMA a replacement application in accordance with subsection 33(3).

36 Applicant to make statutory declaration about affiliation

- (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.

Note: Division 4 of this Part is about dealing with affiliations.

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Section 37

- (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.

37 Failure to give statutory declaration about affiliation

- (1) If an applicant does not give the ACMA a statutory declaration in accordance with section 36 by the deadline stated under subsection 36(2) (or, if the ACMA agrees to a later deadline, the agreed deadline), the applicant is taken to have withdrawn its application.
- (2) The ACMA must tell the applicant in writing if it is taken to have withdrawn its application under subsection (1).

Division 3—Eligibility points and leftover lots

38 Applying for eligibility points and to be allocated leftover lots

- (1) After the application deadline, and no later than the eligibility deadline, an applicant must give the ACMA a completed eligibility nomination form, which:
 - (a) specifies the number of eligibility points the applicant wishes to have immediately before the start of the 3.7 GHz auction; and
 - (b) if the applicant is eligible to apply to be directly allocated a leftover lot (see section 39), and wishes to so apply—applies to be directly allocated the leftover lot.

Note: The applicant must secure the eligibility points with an eligibility payment or deed of financial security: see section 40.

Updating eligibility nomination form

- (2) Subject to subsection 47(2), an applicant who has given the ACMA a completed eligibility nomination form before the eligibility deadline may give the ACMA an updated, additional or replacement version of the document at any time until the eligibility deadline, but not after the eligibility deadline.

Note: A consequence of this is that an applicant who applies to be directly allocated a leftover lot cannot withdraw this application after the eligibility deadline (but subject to section 47).

Failure to comply

- (3) An applicant is taken to have withdrawn its application if the applicant fails to comply with subsection (1).
- (4) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (3).

39 Who is eligible to apply for a leftover lot

A person is eligible to apply to be directly allocated a leftover lot if the person is:

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Section 40

- (a) the adjacent licensee identified for that lot in column 5 of the table in Schedule 3 of the marketing plan; or
- (b) if the licensee identified under paragraph (a) is a body corporate—a related body corporate of that licensee.

40 Requirement to secure eligibility points

- (1) This section applies if an applicant gives an eligibility nomination form, or updated eligibility nomination form, to the ACMA.

Note: See subsections 38(1), 44(7) and 47(2).

- (2) The applicant must secure the eligibility points specified in its eligibility nomination form or updated eligibility nomination form by doing any of the following by the eligibility deadline or extended eligibility deadline (if there is one):
 - (a) making a payment (*eligibility payment*) of the amount required by subsection (3) to the ACMA;
 - (b) giving the ACMA a deed of financial security for the amount required by subsection (3);
 - (c) both:
 - (i) making a payment (*eligibility payment*) for part of the amount required by subsection (3) to the ACMA; and
 - (ii) giving the ACMA a deed of financial security for the remainder of that amount.

Note: For information on how an eligibility payment is made, see section 9. For information on how a deed of financial security is given, see section 6 and subsections (4) to (6).

Amount required to secure eligibility points

- (3) The amount required by this subsection (the *required amount*) for an applicant (when expressed in dollars) is the sum of:
 - (a) the product of the number of eligibility points specified in the form and the dollar value of those points (as set under paragraph 21(b)); and
 - (b) for an applicant who applies to be directly allocated a leftover lot—10% of the set price for the leftover lot (as set under paragraph 21(d) as varied (if relevant) under paragraph 24(1)(c)).

Requirements for deeds

- (4) If a deed of financial security is given to the ACMA by email, or uploaded to an online database, before the eligibility deadline, or the extended eligibility deadline (if there is one), 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).
- (5) A deed of financial security must be executed by:
 - (a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or

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Section 41

- (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*.

Note: See also subsection 42(3).

- (6) 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.

41 Number of eligibility points secured

Initial eligibility points secured

- (1) An applicant's eligibility points immediately before the start of the 3.7 GHz auction is the number of points secured by the applicant, as determined under this section.

Note: Section 125 sets out how a bidder's eligibility points change during the allocation process. This section is relevant for item 1 of the table in that section.

- (2) If the applicant gives the ACMA a completed eligibility nomination form (or updated eligibility nomination form) and complies with subsection 40(2), the applicant secures the number of eligibility points specified in its completed eligibility nomination form (or updated eligibility nomination form).

Note 1: A bidder may be restricted in its use of eligibility points by the allocation limits.

Note 2: A bidder's eligibility points may change during the auction: see section 125.

Incomplete payment or financial security

- (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 (see subsection 40(3)), 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.

Failure to remedy incomplete payment or financial security—reduced eligibility points

- (4) If:
 - (a) the applicant does not comply with the notice given under subsection (3); and

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- (b) the number of points worked out under subsection (5) or (6) (whichever is applicable) is one or more;

then applicant secures the number of eligibility points worked out under the applicable subsection.

Note: If the number of eligibility points is less than one, section 42 applies.

Applicant who did not apply for a leftover lot

- (5) If the applicant did not apply to be directly allocated a leftover lot, the number of points is worked out by:
 - (a) working out the amount of the incomplete amount as a proportion of the amount required under subsection 40(3); and
 - (b) multiplying that proportion by the number of eligibility points specified in the eligibility nomination form; and
 - (c) rounding the result from paragraph (b) down to the nearest integer.

Applicant who applied for a leftover lot

- (6) If the applicant applied to be directly allocated a leftover lot, the number of points worked out under this subsection is:
 - (a) if the incomplete amount equals or falls short of the amount required under paragraph 40(3)(b)—zero; or
 - (b) if the incomplete amount exceeds the amount required under paragraph 40(3)(b)—worked out by:
 - (i) working out the amount of the excess as a proportion of the required amount; and
 - (ii) multiplying that proportion by the number of eligibility points specified in the eligibility nomination form; and
 - (iii) rounding the result from subparagraph (ii) down to the nearest integer.

42 Consequence of failing to secure eligibility points

Consequence for applicants who did or did not apply for a leftover lot

- (1) In a situation covered by subsection (2), (3) or (4):
 - (a) for an applicant who applied to be directly allocated a leftover lot—the applicant is not entitled to bid during the primary stage or the secondary stage of either the 3.7 GHz auction or the 3.4 GHz auction; or
 - (b) for an applicant who did not apply to be directly allocated a leftover lot—the applicant is taken to have withdrawn its application.

Failure generally

- (2) This situation arises if an applicant fails to comply with subsection 40(2) or (4).

Failures relating to deeds

- (3) This situation arises if:

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Section 43

- (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 40(5); or
- (b) an applicant fails to comply with subsection 40(6).

Payment or security insufficient

- (4) This situation arises if:
 - (a) an applicant fails to comply with a notice given under subsection 41(3); and
 - (b) the number of points worked out under subsection 41(5) or (6) (whichever is applicable) is less than one.

ACMA must notify affected applicants

- (5) If any of the following occur as a result of the operation of this section, the ACMA must tell the relevant applicant in writing about that fact:
 - (a) an applicant is not entitled to bid during the primary stage or secondary stage;
 - (b) an applicant is taken to have withdrawn its application.

Division 4—Dealing with affiliations

43 Procedure if ACMA satisfied applicants are affiliated

- (1) If the ACMA is satisfied that 2 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 44; or
 - (ii) each affiliated applicant, but one, must withdraw its application.
- (2) Within 10 working days of the ACMA notifying the affiliated applicants under subsection (1), the applicants must notify the ACMA in writing which option under paragraph (1)(b) the applicants have decided to take.
- (3) If the affiliated applicants do not notify the ACMA within those 10 working days, each of the affiliated applicants is taken to have withdrawn its application.
- (4) If, within those 10 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).

44 Dealing with affiliation—new applicant

New applicant to be formed and may apply to participate

- (1) If the members of a group of affiliated applicants notified by the ACMA under subsection 43(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 10 working days of the ACMA notifying the affiliated applicants under subsection 43(1):
 - (a) give the ACMA a completed application form; and
 - (b) pay the application fee.

Note: For information on how an application fee must be paid, see section 9. For refunds, see section 34.
- (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) 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.

Applying for eligibility points and to be allocated leftover lots

- (6) The new applicant must, no later than the eligibility deadline or extended eligibility deadline (if there is one), whichever is the case (or if the ACMA agrees to a later time, the agreed time) give the ACMA:
 - (a) a completed eligibility nomination form, which includes the matters set out in subsection 38(1); or
 - (b) a completed updated eligibility nomination form, which includes the matters set out in subsection 47(2);
as appropriate.

Note: The applicant must secure the eligibility points with an eligibility payment or deed of financial security: see section 40.

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Division 5 Dealing with changes to prices or lot ratings

Section 45

- (7) If the new applicant fails to comply with subsection (6), the new applicant is taken to have withdrawn its application.
- (8) 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.
- (9) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (7) or (8).

45 Initial auction information provided to new applicants

After an application is made under section 44, 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 round for the primary stage or secondary stage;
- (c) information about making bids in the auction system during the primary stage, secondary stage and assignment stage.

Division 5—Dealing with changes to prices or lot ratings

46 Notice about updating application documents

If the ACMA exercises a power under section 24 (about the ACMA varying prices and lot ratings), then as soon as practicable after setting the deadlines under subsection 24(2), the ACMA must notify all applicants, in writing, of the effect of sections 40 and 47 (requirement to give updated eligibility nomination form and secure eligibility points).

47 Updating eligibility nomination form and financial security

- (1) As soon as practicable after the new application deadline, the ACMA must give each applicant a copy of the updated eligibility nomination form.
- (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 eligibility points the applicant wishes to have immediately before the start of the 3.7 GHz auction; and
 - (b) if the applicant is eligible to apply to be directly allocated a leftover lot (see section 39), and wishes to so apply—applies to be directly allocated the leftover lot.

Note: The applicant must secure the eligibility points with an eligibility payment or deed of financial security: see section 40.

- (3) An applicant is taken to have withdrawn its application if the applicant fails to comply with subsection (2).

- (4) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (3).

48 Notice inviting new applicants to the auction

- (1) As soon as practicable after the ACMA sets the deadlines under subsection 24(2), the ACMA must publish on its website a notice that:
- (a) invites persons, who are not already applicants, to apply to the ACMA to take part in the auction; and
 - (b) states the 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 24) 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.

49 Applying to be registered—new applicants

- (1) A person (a *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 allocation process if the new applicant wishes to do one or more of the following:
- (c) bid in the 3.7 GHz auction;
 - (d) bid in the 3.4 GHz auction;
 - (e) be directly allocated a leftover lot.

Note: A person who is registered as a bidder in the allocation process may, subject to allocation limits and eligibility points, bid in either or both of the 3.4 GHz auction and the 3.7 GHz auction.

- (2) The new applicant applies by doing all of the following before the new application deadline:
- (a) giving the ACMA a completed application form;
 - (b) giving the ACMA a deed of acknowledgement executed by the applicant;
 - (c) giving the ACMA a deed of confidentiality executed by the applicant;
 - (d) paying the application fee.

Note 1: For information on how an application fee must be paid, see section 9.

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Part 4 Applying to participate

Division 5 Dealing with changes to prices or lot ratings

Section 50

Note 2: An applicant may withdraw its application before the eligibility deadline or extended eligibility deadline: see subsection 52(1).

Applying for eligibility points and to be allocated leftover lots

- (3) After the new application deadline, and no later than the extended eligibility deadline, a new applicant must give the ACMA a completed updated eligibility nomination form, which:
- (a) specifies the number of eligibility points the applicant wishes to have immediately before the start of the 3.7 GHz auction; and
 - (b) if the applicant is eligible to apply to be directly allocated a leftover lot (see section 39), and wishes to so apply—applies to be directly allocated the leftover lot.

Note: The applicant must secure the eligibility points with an eligibility payment or deed of financial security: see section 40.

Updating documents

- (4) A new applicant may give the ACMA an updated, additional or replacement document:
- (a) for a document mentioned in paragraph (2)(a), (b) or (c)—at any time until the new application deadline, but not after the new application deadline; or
 - (b) for a document mentioned in paragraph (3)(a) or (3)(b)—at any time until the extended eligibility deadline, but not after the extended eligibility deadline.

Failure to give eligibility nomination form

- (5) The new applicant is taken to have withdrawn its application if the applicant fails to comply with subsection (3).
- (6) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (5).

50 Initial auction information for new applicants

As soon as practicable after the new application deadline, the ACMA must give each new applicant under section 49 the following:

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

51 Statutory declarations and affiliations

- (1) If the ACMA receives an application from a new applicant in accordance with subsection 49(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 by the deadline stated under subsection (3) (or, if the ACMA agrees to a later deadline, the agreed deadline), the applicant is taken to have withdrawn its application.
- (5) If the ACMA is satisfied that 2 or more applicants are affiliated, the procedures in sections 43 and 44 apply.
- (6) The ACMA must tell an applicant in writing if it is taken to have withdrawn its application under subsection (4).

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:
 - (a) an applicant withdraws its application under subsection (1), or is taken to have withdrawn its application under another provision of this instrument; and
 - (b) the applicant paid all or part of an eligibility payment under section 40; the ACMA must refund the amount paid within the period specified in subsection 81(2).
- (3) Subsection (2) is subject to sections 153 and 155.
- (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 49(1), an applicant must not be re-admitted to the auction after withdrawing, or being taken to have withdrawn, its application.
- (6) The ACMA must tell an applicant in writing if it has withdrawn its application under this section.

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Division 7 Registration of bidders

Section 53

Division 7—Registration of bidders

53 Registration process

- (1) The ACMA must register a person as a bidder in the allocation process 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 made a valid application under section 33, 44 or 49, including updating, adding to or replacing a document in an application under another provision of this instrument; and
 - (c) the person has not withdrawn, and is not taken by a provision of this instrument to have withdrawn, its application; and
 - (d) subject to subsection (2):
 - (i) the person has 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 40; and
 - (ii) if a deed of financial security has been given—the ACMA is satisfied that the person who executed the deed is a person mentioned in subsection 40(5).
- (2) Paragraph (1)(d) does not apply in relation to an applicant who applied to be directly allocated a leftover lot.
- (3) 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 has applied to be directly allocated a leftover lot;
 - (d) notice of which leftover lots were the subject of applications by other bidders under subparagraph 38(1)(b);
 - (e) information about accessing the auction system;
 - (f) information about how to make an entry and a bid by alternative methods if the bidder is unable to make an entry or a bid using the auction system.

54 Register of bidders

- (1) The ACMA must maintain a register of bidders in the auction in electronic form.
- (2) Before the start of the 3.7 GHz auction, the register must contain the following for each bidder:
 - (a) the bidder's name;
 - (b) the bidder's postal address;
 - (c) the bidder's email address;

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- (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) whether the bidder has applied to be directly allocated a leftover lot;
 - (g) the number of eligibility points secured by the bidder under Division 3 of this Part;
 - (h) the bidder's unused allocation limit for each regional product and each metropolitan product;
 - (i) the bidder's ABN, ACN or ARBN;
 - (j) 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.

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 54(2)(f).

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Part 5 Allocation procedures

Division 1 Allocation of leftover lots

Section 56

Part 5—Allocation procedures

Division 1—Allocation of leftover lots

56 Allocation of leftover lots

- (1) This section applies if a person who is eligible to apply to be directly allocated a leftover lot (see section 39) has applied to the ACMA under section 38 to be directly allocated the leftover lot.
- (2) Immediately after the eligibility deadline, or the extended eligibility deadline, the person is directly allocated the leftover lot.

Note: A person who is directly allocated a leftover lot under this section is a winning bidder in the 3.4 GHz auction (see paragraph 64(1)(c)). Division 7 is about payment and issue of licences for winning bidders.

Division 2—General procedures for both auctions

57 Auction stages

- (1) The 3.7 GHz auction and the 3.4 GHz auction each consist of a primary stage, a secondary stage (if required) and an assignment stage.
- (2) The primary stage is made up of:
 - (a) a pre-bidding round, for bidders:
 - (i) to enter their start demand for lots of each product; and
 - (ii) if desired, elect to adopt the minimum spectrum requirement for lots of each product; and
 - (b) one or more clock rounds for the making of bids on lots of a product, and the results of that clock round; and
 - (c) the determination of the final posted demands, as a result of the final clock round, for the lots of each product allocated to a primary winner, and of the associated primary price, after all clock rounds are completed.
- (3) The secondary stage, if required, is made up of:
 - (a) a pre-bidding round, for bidders to indicate which (if any) residual lots of a product they intend to bid for in the secondary stage of the auction; and
 - (b) one or more rounds for the making of bids on any such residual lots, and the results of that round; and
 - (c) 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 determining the assignment of frequency ranges (which generally involves the making of bids); and

- (b) for the 3.4 GHz auction—the allocation of any leftover lot not directly allocated under Division 1 of this Part; and
- (c) 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.

58 Procedures if only one bidder

- (1) If there is only one bidder in an auction, the procedures to be applied for allocating lots of the products and assigning frequency ranges are as follows:
 - (a) despite section 92, the bid increment percentage for the first clock round of the primary stage is zero percent; and
 - (b) there will be one clock round in the primary stage, during which the bidder is treated as having made maintain bids for each product; and
 - (c) 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 subsection 142(3).

Note 2: The assignment stage for the 3.4 GHz auction may include the allocation of leftover lots: see subsection 57(4).

- (2) The ACMA must notify the bidder as soon as reasonably practicable after the pre-bidding round of the primary stage that it is the only bidder, and that the procedures in this section apply.

59 Auction rules

- (1) The rounds for the primary stage of an auction are to be conducted in accordance with the rules in Division 1 of Part 6.
- (2) The rounds for the secondary stage of an auction, if required, are to be conducted in accordance with the rules in Division 2 of Part 6.
- (3) The rounds for the assignment stage of an auction are to be conducted in accordance with the rules in Division 3 of Part 6.

60 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 round of the primary stage or the secondary stage of an auction; or
 - (b) a bid for a clock round in the primary stage, a round in the secondary stage, or in an assignment round of an auction;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:

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- (a) an entry in the pre-bidding round of the primary stage or the secondary stage of an auction; or
- (b) a bid for a clock round in the primary stage, a round in the secondary stage, or in an assignment round of an auction;

after the end time of the pre-bidding round or relevant round if the auction manager is satisfied that the bidder could not make the entry during the pre-bidding round 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 round 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 round 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 subsection 99(5) and 122(4) for details of the information about the outcome of the pre-bidding round that will be provided to bidders.

Note 2: See section 97, section 118, and subsection 142(1), for details of the information about the outcome of a round of the auction that will be provided to bidders.

61 Action that auction manager may take in exceptional circumstances

- (1) If the auction manager is satisfied that an 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 round of the primary stage or the secondary stage of the auction;
 - (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 round, and restart the pre-bidding round, of the primary stage or the secondary stage of the auction; 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 of the auction; or
 - (ii) all the rounds in the secondary stage of the auction; or
 - (iii) all the assignment rounds of the auction;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 28.
- (3) Subsection (2) does not limit what might constitute *exceptional circumstances*.
- (4) This section applies to the following:
 - (a) the pre-bidding round for the primary stage or the secondary stage;
 - (b) the clock rounds in the primary stage;
 - (c) the rounds in the secondary stage;
 - (d) the assignment rounds in the assignment stage.

62 Security of the auctions

- (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 allocation 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 allocation period.

63 Advising winning bidders of their auction results

After the completion of the assignment stage of an auction, the auction manager must tell each winning bidder in the auction:

- (a) the number of lots of each product allocated to the winning bidder in the auction (including, for the 3.4 GHz auction, any leftover lots allocated under Division 1 of this Part or section 143); and
- (b) the frequency ranges assigned to the lots allocated in the auction; and
- (c) the winning price to be paid by the winning bidder in relation to the auction.

Note 1: The allocation of spectrum licences is complete when frequency ranges are assigned to lots of a product at the end of the assignment stage of the 3.4 GHz auction.

Note 2: However, spectrum in a spectrum licence may be taken to be unallocated in some circumstances: see subsection 71(7) and sections 89, 153 and 154.

64 Meaning of *winning bidder* and *winning price*

- (1) A *winning bidder*, in the 3.7 GHz auction or the 3.4 GHz auction, is:
 - (a) a primary winner in the auction; or
 - (b) a secondary winner in the auction; or
 - (c) for the 3.4 GHz auction—a person who was allocated a leftover lot under Division 1 of this Part.
- (2) The *winning price* for a winning bidder in relation to the 3.7 GHz auction or the 3.4 GHz auction is the total of:
 - (a) the primary price for all lots allocated to the bidder in the primary stage of the auction; and

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- (b) the secondary price for all lots allocated to the bidder in the secondary stage (if there is one) of the auction; and
- (c) the total assignment price (if any) for all frequency ranges assigned to those lots in the assignment stage of the auction; and
- (d) for the 3.4 GHz auction—the set price for any leftover lot allocated to the bidder under Division 1 of this Part.

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.

Division 3—Dealing with affiliations during the allocation period

65 Affiliation between bidders during allocation period not permitted

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

Note: If the ACMA is satisfied that a breach of this provision has occurred, the ACMA may take action under section 153. Section 153 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

66 Requirement to report affiliation

If, at any time during the allocation 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.

67 Allocation process continues despite possible affiliation

If the ACMA becomes aware during the allocation period that 2 or more bidders may be affiliated, the allocation process is to continue and the bidders may continue to participate in the process.

68 Consideration of affiliation

- (1) If the ACMA has reason to believe that 2 or more bidders are affiliated during the allocation 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 66 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.

69 Statements about affiliations during an auction

- (1) This section applies if:
 - (a) the ACMA has notified bidders under subsection 68(1) that it has reason to believe the bidders are affiliated; and
 - (b) the time at which the ACMA did so (the *notice time*) occurred during the allocation period, but before the start of the assignment stage of the 3.4 GHz auction.

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- (2) As soon as practicable after giving the notice, the ACMA must:
- (a) give each notified bidder details about the identity of all other notified bidders; and
 - (b) ask each notified bidder to make a statement about whether the bidder is an affiliate of another person who is a notified bidder and, if so, identifying the other notified bidder and giving details of the affiliation.
- (3) In addition to subsection (2), if the notice time was:
- (a) for the 3.7 GHz auction—after the start of the allocation period but before the end of the primary stage (if there is no secondary stage) or the secondary stage of the auction; or
 - (b) for the 3.4 GHz auction—after the start of the pre-bidding round of the primary stage and before the end of the primary stage (if there is no secondary stage) or the secondary stage of the auction;
- then the ACMA must, as soon as practicable after the end of the relevant stage and before the start of the assignment stage of the auction:
- (c) give each primary winner and each secondary winner in the auction details about the identity of all other persons who are:
 - (i) primary winners and secondary winners in that auction; and
 - (ii) for the 3.4 GHz auction—primary winners and secondary winners in the 3.7 GHz auction; and
 - (d) ask each such primary winner and secondary winner to make a statement about whether the winner is an affiliate of another person who is a primary winner or secondary winner and, if so, identifying the other winner and giving details of the affiliation.
- (4) The ACMA must state a deadline, at least 10 working days after the date of the request, before which a statement requested under subsection (2) or (3) must be received by the ACMA.
- (5) A notified bidder, primary winner or secondary winner must give the ACMA a statement requested under subsection (2) or (3) 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.

70 Notification of affiliation during allocation period

If:

- (a) the ACMA is satisfied that 2 or more bidders (whether or not primary winners or secondary winners) are affiliated; and
- (b) the time at which the ACMA became so satisfied (the *affiliation time*) was during the allocation period, but before the start of the assignment stage of the 3.4 GHz auction;

the ACMA must, in writing, notify those bidders and tell them the basis on which the ACMA is satisfied the bidders are affiliated.

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Part 5 Allocation procedures

Division 3 Dealing with affiliations during the allocation period

Section 71

71 Consequence of affiliation before assignment stage

- (1) This section applies in relation to an auction (the *affected auction*) if:
 - (a) the ACMA notified 2 or more persons under section 70 (*affiliated persons*); and
 - (b) either:
 - (i) 2 or more of those affiliated persons are primary winners or secondary winners in the affected auction; or
 - (ii) for the 3.4 GHz auction—of the affiliated persons, at least one is a primary winner or secondary winner in the 3.7 GHz auction and at least one is a primary winner or secondary winner in the 3.4 GHz auction; and
 - (c) the affiliation time (see paragraph 70(b)) was:
 - (i) for the 3.7 GHz auction—after the start of the allocation period but before the end of the primary stage (if there is no secondary stage) or the secondary stage of the auction; or
 - (ii) for the 3.4 GHz auction—after the start of the pre-bidding round of the primary stage and before the end of the primary stage (if there is no secondary stage) or the secondary stage of the auction; and
 - (d) the allocation of spectrum licences to the affiliated persons who are primary winners or secondary winners in the affected auction for lots of each metropolitan product and regional product allocated to those persons in the primary stage or secondary stage of the auction would exceed the allocation limits.
- (2) The ACMA must not allocate spectrum licences to the affiliated persons who are primary winners or secondary winners in the affected auction that would exceed the allocation limits.
- (3) If it is possible for one or more lots of a product to be allocated to one or more affiliated persons who are primary winners or secondary winners in the affected auction up to the allocation limits, then the affiliated persons who are primary winners or secondary winners in the auction may give a direction in writing to the ACMA specifying how lots are to be allocated between those persons up to the allocation limits.
- (4) 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 70.
- (5) If the ACMA receives a direction that complies with subsections (3) and (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 (3) and (4), the ACMA may, for any part of the spectrum where the lots of one or more products allocated to the affiliated persons who are primary winners or secondary

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winners in the auction exceed the allocation limits, at its discretion allocate lots of one or more of those products to each person up to those allocation limits.

- (7) Spectrum in excess of the allocation limits that is not allocated under subsection (5) or (6) is taken to be unallocated.
- (8) A winning bidder who is allocated at least one lot of a product after applying this section must pay the full balance of the total 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) for all frequency ranges assigned to any lots which were allocated to the winning bidder as a result of this section.

Note: This subsection relates to Division 7 of Part 5 of this instrument and is disallowable under section 42 of the *Legislation Act 2003*.

- (9) This section prevails over section 109 and section 128.

72 Consequence of affiliation for 3.4 GHz auction—apportionment of unused allocation limit

- (1) This section applies if:
 - (a) ACMA has notified bidders under section 70 (*affiliated persons*); and
 - (b) the affiliation time (see paragraph 70(b)) was before the start of the pre-bidding round of the primary stage of the 3.4 GHz auction.
- (2) To avoid doubt, this section applies in addition to section 71 if the affiliation time was the time set out in subparagraph 71(1)(c)(i) for the 3.7 GHz auction.
- (3) The affiliated persons may give a direction in writing to the ACMA specifying how to apportion between those persons the unused allocation limit for each metropolitan product or regional product that is available in the 3.4 GHz auction.
- (4) 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 70.
- (5) If the ACMA receives a direction that complies with subsections (3) and (4), then for the purposes of subsection 14(4), the manner of apportioning the relevant limit between the affiliated bidders is the manner specified in the direction.
- (6) If the ACMA does not receive a direction that complies with subsections (3) and (4), then for the purposes of subsection 14(4), the manner of apportioning the relevant limit between the affiliated bidders is the manner determined by the ACMA at its discretion.

Note: Section 76 requires the ACMA to give the bidders notice of their recalculated unused allocation limit.

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Part 5 Allocation procedures

Division 4 Procedures relating to the 3.7 GHz auction

Section 73

- (7) For the purposes of section 28, the affiliated persons are authorised to disclose information to each other for the purpose of deciding how to direct ACMA to apportion the unused allocation limit.

Division 4—Procedures relating to the 3.7 GHz auction

73 Preparation for bidding

The ACMA must give each bidder an opportunity to trial the auction system before the 3.7 GHz auction commences.

74 Scheduling of auction rounds

- (1) The rounds of the 3.7 GHz auction for the primary stage, secondary stage and assignment stage are to be scheduled in accordance with this instrument.
- (2) The first clock round of the primary stage of the 3.7 GHz auction starts on the date and time for that clock round set by the auction manager under paragraph 75(1)(a).

75 Pre-bidding round and first clock round of 3.7 GHz auction

- (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 of the 3.7 GHz auction; 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 of that auction as the pre-bidding round.
- (2) At least 10 working days before the start of the pre-bidding round of the primary stage of the 3.7 GHz auction, the auction manager must notify each bidder of:
 - (a) the start date and start time, and duration, of the pre-bidding round of the primary stage of the 3.7 GHz auction; and
 - (b) the start date and start time of the first clock round of the primary stage of the 3.7 GHz auction.

The ACMA may vary start date and start time

- (3) Not less than 2 working days before the start date and start time of the pre-bidding round of the primary stage of the 3.7 GHz auction, the ACMA may:
 - (a) vary the start date and start time of the first clock round of the primary stage of the 3.7 GHz auction to a date that is at least 10 working days later than the date set under paragraph (1)(a); and
 - (b) set a period of at least 3 hours that falls within the 48 hours before the varied start date and start time of the first clock round of the primary stage of that auction as the pre-bidding round.

- (4) If the ACMA varies the start date and start time under subsection (3), then at least 10 working days before the varied start date of the first clock round of the 3.7 GHz auction, the auction manager must notify each bidder of:
 - (a) the new start date and new start time, and duration, of the pre-bidding round of the primary stage of the 3.7 GHz auction; and
 - (b) the new start date and new start time of the first clock round of the primary stage of the 3.7 GHz auction.
- (5) If the ACMA varies the start date and start time under subsection (3), then the reference in that subsection (3) to the start date and start time of the pre-bidding round of the primary stage of the 3.7 GHz auction is taken to be a reference to that start date and start time as varied by the ACMA.

Division 5—Procedures relating to the 3.4 GHz auction

76 Recalculation of unused allocation limit

- (1) This section applies in relation to a bidder who is:
 - (a) the primary winner or secondary winner for a lot of a product in the 3.7 GHz auction; or
 - (b) affiliated with a primary winner or secondary winner for a lot of a product in the 3.7 GHz auction.

- (2) After the end of the 3.7 GHz auction, the ACMA must determine the unused allocation limit (see sections 14 and 72) for the bidder for each metropolitan product or regional product that will be available in the 3.4 GHz auction.

Note: The unused allocation limit must take into account the outcome of the 3.7 GHz auction: see subsection 14(3).

Note: The unused allocation limit is affected by affiliations between auctions: see section 72.

- (3) At least 3 working days before the start of the pre-bidding round of the primary stage of the 3.4 GHz auction, the ACMA must notify the bidder of its unused allocation limit for each such product.

77 Recalculation of eligibility points

- (1) This section applies in relation to a bidder who is the primary winner or secondary winner for a lot of a product in the 3.7 GHz auction.
- (2) After the end of the 3.7 GHz auction, the ACMA must calculate the bidder's eligibility points as at the time immediately before the start of the 3.4 GHz auction (see item 4 of section 102).
- (3) At least 3 working days before the start of the pre-bidding round of the primary stage of the 3.4 GHz auction, the ACMA must notify the bidder of the number of eligibility points calculated.

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Part 5 Allocation procedures

Division 6 Confirmation of results of allocation process

Section 78

78 Updating the register

Before the start of the 3.4 GHz auction, the ACMA must update the register of bidders maintained under section 54 with the following information:

- (a) the number of eligibility points the bidder has as at the time immediately before the start of the 3.4 GHz auction;
- (b) the bidder's updated unused allocation limit for each regional product and each metropolitan product available in the 3.4 GHz auction;
- (c) any other information contained in the register that requires updating.

79 Scheduling of auction rounds

- (1) The rounds of the 3.4 GHz auction for the primary stage, secondary stage and assignment stage are to be scheduled in accordance with this instrument.
- (2) The first clock round of the primary stage of the 3.4 GHz auction starts on the date and time for that clock round set by the auction manager under paragraph 80(1)(a).

80 Pre-bidding round and first clock round of 3.4 GHz auction

- (1) After the completion of the assignment stage of the 3.7 GHz auction, the auction manager must:
 - (a) set the start date and start time of the first clock round of the primary stage of the 3.4 GHz auction; 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 of that auction as the *pre-bidding round*.
- (2) The minimum period between the completion of the assignment stage of the 3.7 GHz auction and the start of the first clock round of the primary stage of the 3.4 GHz auction is 5 working days.
- (3) At least 5 working days before the start of the pre-bidding round of the primary stage of the 3.4 GHz auction, the auction manager must notify each bidder of:
 - (a) the start date and start time, and duration, of the pre-bidding round of the primary stage of the 3.4 GHz auction; and
 - (b) the start date and start time of the first clock round of the primary stage of the 3.4 GHz auction.

Division 6—Confirmation of results of allocation process

81 Notice and refunds to withdrawn applicants

- (1) As soon as practicable after the end of the allocation 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 28 has ended.

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- (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 153.

Note: Section 96 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

82 Notice and refunds to unsuccessful bidders

- (1) After the completion of the assignment stage of the 3.4 GHz auction, the ACMA must notify each bidder that is not a winning bidder (*unsuccessful bidder*) that:
 - (a) the bidder was unsuccessful in the auctions; and
 - (b) the bidder's confidentiality obligation under section 28 will end when the ACMA announces or publishes the information mentioned in subsection 90(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 153.

Note: Section 96 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

83 Advising all bidders of results of allocation process

- (1) After the completion of the assignment stage of the 3.4 GHz auction, the auction manager must tell all bidders in writing:
 - (a) the names of all winning bidders for each auction; and
 - (b) the names of any unsuccessful bidders (see section 82) in each auction; and
 - (c) the frequency ranges in relation to the lots allocated under this instrument (including leftover lots allocated under Division 1 of this Part or section 143); and
 - (d) the winning price paid, or to be paid, by each winning bidder in relation to each auction; and
 - (e) the posted price for the lots of each product in the final clock round of each auction; and
 - (f) the secondary price of each residual lot in the secondary stage (if any) of each auction.
- (2) Unless bidders agree in writing, the ACMA must not provide to bidders any further information regarding the results of the auction other than that mentioned in subsection (1), and in subsections 130(2) and 131(1), unless required by law.

Note: For information about the auction that is announced or published after the end of the allocation period, see subsection 90(1).

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Part 5 Allocation procedures

Division 7 Payment and issue of licences

Section 84

Division 7—Payment and issue of licences

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

84 Spectrum access charge

The spectrum access charge payable by a bidder for issue of a spectrum licence under Subdivision B of Division 1 of Part 3.2 of the Act, and in accordance with this instrument, is the sum of:

- (a) the bidder's winning price in the 3.7 GHz auction; and
- (b) the bidder's winning price in the 3.4 GHz auction.

85 Balance of the total winning price

For a person who is a winning bidder in either or both of the 3.7 GHz auction and the 3.4 GHz auction, the ***balance of the total winning price*** is the spectrum access charge calculated for the bidder under section 84, minus any eligibility payment made by the bidder under section 40.

86 Sufficient eligibility payment—issue of spectrum licence without further payment

- (1) If the balance of the total winning price for a winning bidder is an amount less than zero:
 - (a) the ACMA must refund the eligibility payment in excess of the winning price no later than 6 months after telling bidders information under section 83; and
 - (b) the bidder is entitled to be issued, without further payment:
 - (i) a spectrum licence for each part of the spectrum from 3400 MHz to 3575 MHz assigned to the lots (if any) allocated to the bidder (including any leftover lots); and
 - (ii) a spectrum licence for each part of the spectrum from 3700 MHz to 3800 MHz assigned to the lots (if any) allocated to the bidder.
- (2) If the balance of the total winning price for a winning bidder is zero, the bidder is entitled to be issued, without further payment:
 - (a) a single spectrum licence for all parts of the spectrum from 3400 MHz to 3575 MHz assigned to the lots (if any) allocated to the bidder (including any leftover lots); and
 - (b) a single spectrum licence for all parts of the spectrum from 3700 MHz to 3800 MHz assigned to the lots (if any) allocated to the bidder.
- (3) Subsections (1) and (2) do not apply if the ACMA has made a decision to retain the eligibility payment under section 153.

Note: Section 153 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this instrument have occurred.

87 Payment of balance of total winning price

- (1) If the balance of the total winning price for a winning bidder is an amount greater than zero, the ACMA must notify the winning bidder, in writing, of the following:
 - (a) the bidder's winning price in relation to both the 3.7 GHz auction and the 3.4 GHz auction;
 - (b) the total of the winning prices referred to in paragraph (a);
 - (c) the effect on the winning price of any eligibility payments made under section 40;
 - (d) that the balance of the total winning price must be paid in full;
 - (e) the date by which the balance of the total winning price must be paid to the ACMA.
- (2) For paragraph (e), the date must be at least 20 working days after the ACMA notifies the winning bidder under subsection (1).
- (3) If the ACMA becomes aware that a notice under subsection (1) contains a material error, the ACMA must give the winning bidder a revised notice.

88 Issue of spectrum licences after payment of balance

If a winning bidder pays the balance of the total winning price in accordance with the notice given under subsection 87(1), the winning bidder is entitled to be issued:

- (a) a single spectrum licence for all parts of the spectrum from 3400 MHz to 3575 MHz assigned to the lots (if any) allocated to the bidder (including any leftover lots); and
- (b) a single spectrum licence for all parts of the spectrum from 3700 MHz to 3800 MHz assigned to the lots (if any) allocated to the bidder.

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

89 Default

If a winning bidder does not pay the balance of the total winning price in accordance with the notice given under subsection 87(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 148 applies to each lot (and associated spectrum assigned to each lot), including any leftover lot, that, but for this section, would have been included in a spectrum licence allocated to the winning bidder.

Note: See section 153 for when certain breaches of this instrument have occurred, and section 157 in relation to other rights of the ACMA and the Commonwealth.

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Part 5 Allocation procedures

Division 7 Payment and issue of licences

Section 90

90 Publication of allocation results

- (1) The ACMA must announce or publish the following information about the allocation process after the end of the allocation period:
 - (a) the names of the winning bidders in each auction;
 - (b) the spectrum allocated to each winning bidder;
 - (c) the winning price paid, or to be paid, by each winning bidder in relation to each auction;
 - (d) the posted price of the lots of each product in the final clock round;
 - (e) the secondary price of each residual lot in the secondary stage (if any) of each auction.
- (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 28 will end when the ACMA announces or publishes the information.
- (3) Unless all winning bidders agree in writing, the ACMA will not announce or publish any further information regarding the results of the auction, unless required by law.

Part 6—Auction rules

Division 1—Rules for the primary stage

Subdivision A—Application

91 Application of Division

- (1) This Division applies to the 3.7 GHz auction and the 3.4 GHz auction.
Note: Subsection 59(1) requires the primary stage of an auction to be conducted in accordance with this Division.
- (2) The following lots are available in the primary stage of an auction:
 - (a) for the 3.7 GHz auction—all of the lots of the 3.7 GHz products;
 - (b) for the 3.4 GHz auction—all of the lots of the 3.4 GHz products.

Subdivision B—Arrangements for primary stage

92 Bid increment percentage for primary stage

Auction manager must set bid increment percentage

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

Auction manager may change bid increment percentage during primary stage

- (4) The auction manager may, at any time during the primary stage, change the bid increment percentage for the lots of a product in a clock round.
- (5) Before doing this, the auction manager must:
 - (a) tell each bidder in writing of the proposed change; and
 - (b) ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments on the proposal that are received within that time.
- (6) The auction manager must notify each bidder of the change before the clock round for which the change takes effect.

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Part 6 Auction rules

Division 1 Rules for the primary stage

Section 93

93 Eligibility requirement percentage for primary stage

Auction manager must set eligibility requirement percentage

- (1) Before the first clock round, the auction manager must set a percentage (the ***eligibility requirement percentage***) to be applied in calculating the activity target during each clock round.

Note: For the activity target, see subsection 103(3).

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

Auction manager may change eligibility requirement percentage during primary stage

- (4) 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.
- (5) Before doing this, the auction manager must:
 - (a) tell each bidder in writing of the proposed change; and
 - (b) ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments on the proposal that are received within that time.
- (6) The auction manager must notify each bidder of the change before the clock round for which the change takes effect.

94 Scheduling of 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 scheduling of clock rounds between those times is at the auction manager's discretion.
- (3) There is no minimum or maximum length for a clock round, and no minimum or maximum length for the interval between clock rounds.
- (4) There is no upper or lower limit on the number of clock rounds per day.
- (5) Subject to sections 75 and 80, 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.

95 Recess days

- (1) The auction manager may declare a day to be a recess day (whether or not the day is a working day) on which there will be no clock rounds.
- (2) Before declaring a recess day, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received.
- (3) If the auction manager decides to declare a day to be a recess day, the auction manager must tell each bidder in writing of the recess.

96 Entries by auction manager before pre-bidding round

Before the pre-bidding round, the auction manager must enter in the auction system the following information for each bidder:

- (a) the bidder's eligibility points as at the time just before the start of the pre-bidding round;
- (b) the bidder's unused allocation limit for each product as at the time just before the start of the pre-bidding round.

97 Information available for clock rounds of the primary stage

Information for the start of each clock round

- (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 in the clock round:
 - (i) the opening price; and
 - (ii) the clock price;
 - (d) the excess demand for the lots of each product for the clock round;
 - (e) the eligibility points of the bidder for the clock round (see section 102);
 - (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.

Posting of results from clock rounds

- (2) After the end 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;

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- (c) any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

Note: Subdivision D of this Division sets out the processing algorithm used to determine posted prices and posted demands.

Subdivision C—Bidding in the primary stage

98 Availability of lots in clock rounds of the primary stage

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

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

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

Note: Section 100 sets out the general rules for a bidder to make a bid in a clock round. For the validity of bids, see section 101.

99 Pre-bidding round

Entries by bidders

- (1) After the auction manager has made the entries in section 96 and during the pre-bidding round, a bidder may, using the auction system:
- (a) enter a number of lots of each product for the first clock round, subject to subsection (2); and
 - (b) on a product by product basis, elect to adopt the minimum spectrum requirement for the primary stage.

Note 1: A bidder may also be taken to make an entry in the circumstances specified in section 60.

Note 2: The minimum spectrum requirement is 2 lots.

Validity rules for start demand in pre-bidding round

- (2) For the purposes of paragraph (1)(a), a number of lots of a product entered in the auction system under paragraph (1)(a) is valid if:
- (a) the bidder's eligibility points referred to in paragraph 96(a) equal or exceed the sum of the lot ratings for each of those lots; and
 - (b) the number of lots entered does not exceed the bidder's unused allocation limit for any product; and
 - (c) taking into account the number of lots entered for all products, the number of lots entered does not exceed the allocation limit for the area of any product for which the number of lots entered is greater than zero; and

- (d) if the bidder elected to adopt the minimum spectrum requirement for the product—the number of lots entered is not 1; and
 - (e) the number of lots entered does not exceed the supply of those lots.
- (3) Subsection 12(4) applies in relation to the number of lots of a product entered in the auction system under paragraph (1)(a) of this section in the same way that subsection applies to a bid for lots of a product.
- (4) If the number of lots of a product recorded in the auction system for a bidder under paragraph (1)(a) is valid, that number is the bidder's **start demand** for lots of the product for the first clock round.

Entries to be made known to each bidder

- (5) After the end of the pre-bidding round, the auction manager must provide the following information to each bidder, using the auction system:
- (a) the bidder's start demands for the lots of each product for the first clock round;
 - (b) for each product, whether the bidder elected to adopt the minimum spectrum requirement for the primary stage;
 - (c) the bidder's eligibility points as at the time immediately after the pre-bidding round (see item 2 and item 5 of section 102).

100 Making bids

- (1) A bidder is entitled to bid in a clock round if the bidder has eligibility points remaining for the clock round (see section 102).
- (2) A bidder may not make more than one bid for the lots of each product in each clock round.
- (3) A bid for a product in a clock round of the primary stage consists of:
- (a) a request for a number of lots of the product in the clock round (expressed as a total number of lots requested, not as a change to the start demand); and
 - (b) a price entered by the bidder in relation to each lot of the product for the clock round.
- (4) Except where subsection 60(1) or 60(2) applies, a bidder's bid is taken to have been made in a clock round when the bid has passed data validation checks that are performed by the auction system.
- Note: Subsection 60(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 60(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 that are performed by the auction system. The bid for the lots of a product that will be treated as

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binding for a bidder is the bid in the auction system at the end time of the clock round.

Note: A bidder may also be taken to make a bid in the circumstances specified in section 60.

101 Validity of bids

- (1) A bid in a clock round is valid if:
 - (a) except where subsection 60(2) applies, the bid is received by the auction system between the start time and end time of the clock round; and
 - (b) subsection (2), (4) or (6) applies to the bid.

Note: Subsection 60(2) allows the auction manager to permit a bid to be made after a clock round has ended, in certain circumstances.

Maintain bid

- (2) This subsection applies to a bid for a product in a clock round if:
 - (a) it is a request for a number of lots of the product in the clock round; and
 - (b) that number of lots is the same as the bidder's start demand for the product for the clock round; and
 - (c) the bid price is the same as the clock price for the clock round.
- (3) A valid bid to which subsection (2) applies is a ***maintain bid*** for the product for the clock round.

Note: In some circumstances, a bidder is taken to have made a maintain bid: see paragraph (8)(b) of this section and paragraph 58(1)(b).

Increase bid

- (4) This subsection applies to a bid for a product in a clock round if:
 - (a) it is a request for a number of lots of the product in the clock round; and
 - (b) that number of lots exceeds the bidder's start demand for the product for the clock round; and
 - (c) the number of lots does not exceed the bidder's unused allocation limit for the product; and
 - (d) the bid price:
 - (i) is a multiple of one hundred; and
 - (ii) is not less than the opening price and not greater than the clock price for the lots of the product for the clock round; and
 - (e) the bid would not result in the bidder exceeding the allocation limit for any product; and
 - (f) the number of lots requested:
 - (i) does not exceed the number of lots for the supply of the product; and
 - (ii) if the bidder elected to adopt the minimum spectrum requirement—is at least 2; and

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- (g) the sum of the lot ratings for all the lots of all products requested by the bidder in the clock round does not exceed the bidder's eligibility points for the clock round.

Note: For paragraph (e), subsection 12(4) requires regard to be had to all bids placed by the bidder in the clock round.

- (5) A valid bid to which subsection (4) applies is an **increase bid** for the product for the clock round.

Decrease bid

- (6) This subsection applies to a bid for a product in a clock round if:
- (a) it is a request for a number of lots of the product in the clock round; and
 - (b) that number of lots falls short of the bidder's start demand for the product for the clock round, but is not less than zero; and
 - (c) the bid price:
 - (i) is a multiple of one hundred; and
 - (ii) is not less than the opening price and not greater than the clock price for the lots of the product for the clock round; and
 - (d) if the bidder elected to adopt the minimum spectrum requirement—the number of lots requested is not 1.
- (7) A valid bid to which subsection (6) applies is a **decrease bid** for the product for the clock round.

Deemed bids

- (8) 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 made:
- (a) if the bidder's start demand for the product is zero lots—a maintain bid for the product for the clock round; or
 - (b) if the bidder's start demand for the product is one or more lots—a decrease bid for the number of lots equal to the bidder's start demand for the lots of the product in that clock round, at the opening price for the lots of the product for that clock round.

Note 1: The decrease bid mentioned in paragraph (b) may affect the bidder's eligibility points for the next clock round.

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

102 Eligibility points

A bidder's **eligibility points** at a time in the allocation period are as set out in the table:

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Item	Time	Eligibility points
1	Immediately before the start of the 3.7 GHz auction	the number of points determined under section 41.
2	Immediately after the pre-bidding round of the 3.7 GHz auction	the lesser of: (a) the bidder's eligibility points under item 1; and (b) the sum of the lot ratings of all of the lots in the bidder's start demand for each product
3	During a clock round in the 3.7 GHz auction (other than the first clock round)	the lesser of: (a) the bidder's eligibility points in the previous clock round; and (b) the bidder's eligibility points reduced in accordance with subsection 103(2)
4	Immediately before the start of the 3.4 GHz auction	the number of points worked out by: (a) starting with the bidder's eligibility points immediately before the start of the 3.7 GHz auction; and (b) subtracting the sum of the lot ratings for each lot of a product for which the bidder was the primary winner or secondary winner in the 3.7 GHz auction
5	Immediately after the pre-bidding round of the 3.4 GHz auction	the lesser of: (a) the bidder's eligibility points under item 4; and (b) the sum of the lot ratings of all of the lots in the bidder's start demand for each product
6	During a clock round in the 3.4 GHz auction (other than the first clock round)	the lesser of: (a) the bidder's eligibility points in the previous clock round; and (b) the bidder's eligibility points reduced in accordance with subsection 103(2)

103 Loss of eligibility points for inactivity

- (1) A bidder's eligibility points for a clock round (the *next clock round*) will be reduced to a number calculated in accordance with subsection (2) if the bidder does not meet its activity target (see subsection (3)) in a clock round (the *current clock round*).
- (2) The number of a bidder's eligibility points under subsection (1) for the next clock round is to be calculated as follows:

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

(rounded up to the nearest integer);

where:

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

R is the higher of:

- (a) the sum of the lot ratings of all lots of each product on which the bidder was active in the current clock round (see subsection (4)); or
- (b) the number calculated for the current clock round by:
 - (i) starting with the sum of the lot ratings of all of the lots in the bidder's start demand for each product; and
 - (ii) adding the product of the lot rating and demand change for the bidder's increase bids of each product; and
 - (iii) subtracting the product of the lot rating and demand change for the bidder's decrease bids of each product.

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

Example: A bidder's eligibility points at the start of a clock round is 20,000. The eligibility requirement percentage for the clock round is 60%. This means the activity target (the number of eligibility points the bidder must be active for, in order to maintain 20,000 eligibility points for the following round) is 12,000 eligibility points. After the clock round, the bidder is active for only 10,000 eligibility points (based on its posted demands), so eligibility points will be reduced as a result of under-activity.

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

- (3) The **activity target**, for a bidder during a clock round, means the figure obtained by multiplying the amount of the bidder's eligibility points for that clock round by the eligibility requirement percentage set by the auction manager for that clock round, rounded down to the nearest integer.
- (4) If a bidder has a posted demand greater than zero for lots of a product for a clock round:
 - (a) the bidder is **active** on the lots; and
 - (b) the number of lots on which the bidder is **active** is the number of lots in the posted demand.

Subdivision D—Processing of bids

104 Processing of bids

Maintain bid

- (1) A maintain bid made by a bidder in a clock round is applied in full.

Increase bid or decrease bid

- (2) An increase bid or decrease bid made by a bidder in a clock round is processed by the processing algorithm, see sections 105, 106 and 107.

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Section 105

105 Processing algorithm

- (1) In this Division, the *processing algorithm* is a method in the auction system, that is given effect immediately after the end time of a clock round, that performs the following functions:
 - (a) processes the increase bids and decrease bids for the clock round;
 - (b) calculates the posted price for each lot of a product for the clock round in accordance with subsection (5);
 - (c) calculates the posted demand for each bidder for the lots of each product for the clock round in accordance with subsection (7).
- (2) The processing algorithm processes the increase bids and decrease bids according to the following principles:
 - (a) sections 106 (for increase bids) and 107 (for decrease bids) apply in processing each bid;
 - (b) the order of processing the bids is determined by sorting the bids into a queue, in ascending order, based on the price point of each bid (so that the bid with the lowest price point is processed first) (see subsection (3));
 - (c) the order for bids with equal price points is determined using a pseudorandom process;
 - (d) if a bid is applied in full, it is removed from the queue;
 - (e) if a bid is applied in part, the applied part of the bid is removed from the queue and the unapplied part of the bid is left in its place in the queue;
 - (f) after processing a bid, the algorithm moves to the bid that is at the front of the queue (subject to paragraph (g));
 - (g) if a bid is rejected it is left in its place in the queue, but the algorithm moves to the next bid;
 - (h) the algorithm stops processing bids once all bids in the queue have been processed, or if a bid is rejected and there is no next bid in the queue.
- (3) If an increase bid or a decrease bid (the *earlier bid*) for the clock round was processed in part at a time in the processing of bids, then a reference in this Division to an increase bid or decrease bid (as the case requires) includes a reference to the unapplied part of the earlier bid that was left in its place in the queue in accordance with paragraph (2)(e).

Price point

- (4) In this section, the *price point*, for a bid for a lot of a product for a clock round, is:
 - (a) the difference between the bid price and the opening price;
divided by
 - (b) the difference between the clock price for the clock round and the opening price.

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Posted price

- (5) The **posted price** for a lot of a product for a clock round is determined under column 2 of the applicable item of the following table:

Item	Column 1 If:	Column 2 The posted price is:
1	the excess demand for the lots of the product is greater than zero	the clock price for the clock round
2	(a) the excess demand for the lots of the product is zero, or a negative number; and (b) a decrease bid in the clock round is applied in full or in part	the highest bid price at which a decrease bid is applied (in full or in part) for the clock round
3	(a) the excess demand for the lots of the product is zero, or a negative number; and (b) no decrease bid in the clock round is applied in full or in part	the opening price for the clock round

Excess demand

- (6) **Excess demand**, for lots of a product for a clock round, means the number of lots calculated by subtracting the supply of the product from:
- (a) for the first clock round—the sum of the number of lots in the start demands of all bidders; or
 - (b) for any clock round other than the first clock round—the sum of the number of lots in the posted demands of all bidders.

Note: The excess demand may be a positive number or a negative number or zero. If excess demand is a negative number, that indicates that there is a shortfall (rather than an excess) of demand.

Posted demand for a bidder

- (7) The **posted demand** for a bidder for lots of a product for a clock round is:
- (a) for a bidder who made 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; or
 - (b) for a bidder who made an increase bid or a decrease bid for the lots of the product in the clock round—the provisional posted demand for the lots of the product calculated under section 106 or 107 after the last bid in the queue is processed.

Note: The posted demand could be zero. If a bidder's posted demand for the final clock round is at least one lot of a product, then the bidder is a primary winner: see section 108.

Demand change

- (8) The **demand change** is:

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- (a) for an increase bid—the number of lots in the excess from paragraph 101(4)(b) for the bid; or
- (b) for a decrease bid—the number of lots in the shortfall from paragraph 101(6)(b) for the bid; or
- (c) for part of an increase bid or a decrease bid that is unapplied and that is treated at a time in the processing of bids as an increase bid or decrease bid by subsection 105(3)—the number of lots of the extent to which the bid is unapplied.

106 Applying an increase bid

Available activity

- (1) In this section, the **available activity** (in number of lots of a product) of a bidder, immediately before an increase bid (the **current bid**) for the product (the **current product**) is to be processed, is calculated by:
 - (a) starting with the bidder's eligibility points at the start of the clock round; and
 - (b) subtracting the sum of the lot ratings of all the lots in the bidder's start demand for each product at the start of the clock round; and
 - (c) for each of the bidder's decrease bids for a product for the clock round that has already been applied in full or in part, adding the product of the lot rating and number of lots applied; and
 - (d) for each of the bidder's increase bids for a product for the clock round that has already been applied in full or in part, subtracting the product of the lot rating and number of lots applied; and
 - (e) dividing the result from paragraph (d) by the lot rating for a lot of the current product and rounding the result down to the nearest integer.

Available limit

- (2) In this section, the **available limit** (in number of lots of a product) of a bidder, at a time immediately before the current bid for the current product is to be processed, is the maximum number of lots of the product the bidder could bid for at that time without exceeding an allocation limit in an area.
- (3) In applying subsection 12(4) (which is about applying allocation limits during bidding) for the purposes of determining the available limit under subsection (2) at a time:
 - (a) treat a reference in that subsection to a bid as including a reference to a part of a bid that is treated as an increase bid or decrease bid by subsection 105(3); and
 - (b) despite the references in item 1 or 3 (as the case requires) of the table in subsection 12(4) to “all lots the bidder bids for in the clock round”, have regard only to bids that have already been applied in full or in part at that time.

Note: This means increase bids and decrease bids that are later in the queue are disregarded in determining the available limit.

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Increase bid rejected

- (4) If the number of lots in either or both of the available activity and the available limit is zero:
- (a) the current bid is rejected; and
 - (b) the bidder's **provisional posted demand** for the lots of the product is the sum, in number of lots, of:
 - (i) the bidder's start demand for the product for the clock round; and
 - (ii) if the current bid is a part of an earlier increase bid that was applied in part—the number of lots of the product in the part of the earlier bid that was already applied; and
 - (c) to avoid doubt, subsection (6) does not apply to the current bid.

Increase bid applied in full

- (5) If the lesser of the available activity and the available limit, immediately before the current bid is processed, equals or exceeds the demand change for the current bid:
- (a) the current bid is applied in full; and
 - (b) the bidder's **provisional posted demand** for the lots of the product is the sum, in number of lots, of:
 - (i) the bidder's start demand for the product for the clock round; and
 - (ii) the demand change for the current bid; and
 - (iii) if the current bid is a part of an earlier increase bid that was applied in part—the number of lots of the product in the part of the earlier bid that was already applied.

Increase bid applied in part

- (6) If, immediately before the current bid is processed, the demand change for the current bid exceeds the lesser of the available activity and the available limit then, subject to subsection (7):
- (a) the current bid is applied in part to the extent of the number of lots in the lesser of the available activity and the available limit; and
 - (b) to the extent of the number of lots that comprises the excess, the current bid is unapplied; and
 - (c) the bidder's **provisional posted demand** for the lots of the product is the sum, in number of lots, of:
 - (i) the bidder's start demand for the product for the clock round; and
 - (ii) the number of lots applied under paragraph (a); and
 - (iii) if the current bid is a part of an earlier increase bid that was applied in part—the number of lots of the product in the applied part of the earlier bid.

Note: The remainder of the increase bid will still have to be processed for the current clock round: see paragraph 105(2)(e).

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Minimum spectrum requirement—increase bid rejected

- (7) Despite subsection (4), if:
- (a) the bidder elected to adopt the minimum spectrum requirement for the product; and
 - (b) the provisional posted demand calculated in accordance with subsection (4) would have been one lot of the product;
- then:
- (c) the increase bid is rejected; and
 - (d) the bidder's **provisional posted demand** for the lots of that product is zero.

Note: See also paragraph 101(4)(f).

107 Applying a decrease bid

Provisional excess demand

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

less the demand change for the current bid.

Note: If provisional excess demand is a negative number, that indicates that there is a shortfall (rather than an excess) of demand.

Decrease bid applied in full

- (3) If the provisional excess demand, immediately before the current bid is processed, is equal to or greater than zero:
- (a) the current bid is applied in full; and
 - (b) the bidder's **provisional posted demand** for the lots of the product is, in number of lots, equal to:
 - (i) the bidder's start demand for the product for the clock round; less
 - (ii) the demand change for the current bid; less
 - (iii) if the current bid is a part of an earlier decrease bid that was applied in part—the number of lots of the product in the part of the earlier bid that was already applied.

Decrease bid rejected

- (4) If:

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- (a) the provisional excess demand, immediately before the current bid is processed, is less than zero; and
- (b) the absolute value of the provisional excess demand equals or exceeds the demand change for the current bid;

then:

- (c) the current bid is rejected; and
- (d) the bidder's ***provisional posted demand*** for the lots of the product is, in number of lots, equal to the difference between:
 - (i) the bidder's start demand for the product for the clock round; and
 - (ii) if the current bid is a part of an earlier decrease bid that was applied in part—the number of lots of the product in the part of the earlier bid that was already applied.

Decrease bid applied in part

(5) If:

- (a) the provisional excess demand, immediately before the current bid is processed, is less than zero; and
- (b) the absolute value of the provisional excess demand falls short of the demand change for the current bid;

then:

- (c) the current bid is applied in part to the extent of the number of lots equal to the absolute value of the provisional excess demand; and
- (d) to the extent of the number of lots in the shortfall from paragraph (b), the current bid is unapplied; and
- (e) the bidder's ***provisional posted demand*** for the lots of the product is, in number of lots, equal to:
 - (i) the bidder's start demand for the product for the clock round; less
 - (ii) the number of lots applied under paragraph (c); less
 - (iii) if the current bid is a part of an earlier decrease bid that was applied in part—the number of lots of the product in the part of the earlier bid that was already applied.

Note: The remainder of the decrease bid will still have to be processed for the current clock round: see paragraph 105(2)(e).

(6) Despite subsection (5) if:

- (a) the bidder elected to adopt the minimum spectrum requirement for the product; and
- (b) the provisional posted demand calculated in accordance with subsection (5) would have been one lot of the product;

then:

- (c) the current bid is applied in full; and
- (d) the bidder's ***provisional posted demand*** for the lots of that product is zero.

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Subdivision E—Bringing the primary stage to an end

108 End of clock rounds

- (1) The clock rounds of the primary stage end immediately after the final clock round.
- (2) A clock round of the primary stage is the *final clock round* if, for every product, the total number of lots in the posted demands of all bidders after the clock round is no more than the supply.

Determining the primary winners

- (3) If the number of lots in a bidder's posted demand for a product for the final clock round is at least one lot, the bidder is a *primary winner* for that number of lots of the product.

109 Allocation of lots to primary winners

The primary winner for a number of lots of a product is allocated that number of lots of the product.

Note: This section is subject to section 71 (about affiliations that ACMA notifies during the primary stage or secondary stage of an auction).

110 Determination of primary prices

The *primary price* to be paid by a primary winner for all lots (of all products) allocated to the primary winner in the primary stage is the sum of the posted prices for each of those lots for the final clock round.

Note: This section relates to Division 7 of Part 5 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

111 Results of the primary stage

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

112 End of the primary stage

Immediately after the auction manager provides the results in accordance with section 111, the auction manager must tell each bidder, in writing, that the primary stage is completed.

Division 2—Rules for the secondary stage

Subdivision A—Application

113 Application of Division

- (1) This Division applies to an auction if:
 - (a) after the final clock round of the primary stage of the auction, there is a residual lot for at least one product; and
 - (b) there is at least one bidder who could make a valid bid for that residual lot (see section 124).

Note 1: Subsection 59(2) requires the secondary stage of an auction to be conducted in accordance with this Division.

Note 2: Eligibility points are not required to bid in the secondary stage.

- (2) If, after the final clock round of the primary stage of the auction:
 - (a) the total of the posted demands of all bidders for lots of a product falls short of the supply of the product for that final clock round; and
 - (b) the shortfall is one lot;the shortfall is a *residual lot* of the product.
- (3) If this Division applies to an auction, each residual lot that satisfies subsection (1) is available in the secondary stage of the auction.

Subdivision B—Arrangements for secondary stage

114 Bid increment percentage for secondary stage

Auction manager must set bid increment percentage

- (1) Before the first round of the secondary stage, the auction manager must set a percentage (the *bid increment percentage*) for each lot as a percentage of the starting price for the lot for the first round of the secondary stage, and of the specified price for the lot in any other round of the secondary stage.
- (2) 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.
- (3) The bid increment percentage may be different for different lots and may be different for the same lot between different rounds of the secondary stage.

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Division 2 Rules for the secondary stage

Section 115

Auction manager may change bid increment percentage during secondary stage

- (4) The auction manager may, at any time during the secondary stage, change the bid increment percentage for a lot of a product in a round of the secondary stage.
- (5) Before doing this, the auction manager must:
 - (a) tell each bidder of the proposed change; and
 - (b) ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments on the proposal that are received within that time.
- (6) The auction manager must notify each bidder of the change before the round for which the change takes effect.

115 Scheduling of rounds

- (1) There must be at least 24 hours between the final clock round of the primary stage and the start of the pre-bidding round of the secondary stage.
- (2) The pre-bidding round must be a period of at least 30 minutes and must conclude at least 30 minutes before the start of the first round of the secondary stage.
- (3) Rounds of the secondary stage must start and end between 9.00 am and 5.00 pm on working days, other than a day declared under section 116 to be a recess day.
- (4) The scheduling of rounds between those times is at the auction manager's discretion.
- (5) There is no minimum or maximum length for a round, and no minimum or maximum length for the interval between rounds.
- (6) There is no upper or lower limit on the number of rounds per day.
- (7) The auction system will indicate to each bidder for the first round of a given day the anticipated schedule of rounds for that day at least 1 hour before the start time of the first round of the day. However, the auction manager may, at any time, modify the schedule of rounds. If this occurs, the auction manager must tell each bidder of the change as soon as practicable.

116 Recess days

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

117 Entries by auction manager before pre-bidding round

Before the pre-bidding round, the auction manager must enter in the auction system the residual lots that are available for each bidder for bidding in the secondary stage.

Note: For when a lot is available to a bidder in the secondary stage, see section 120.

118 Information available during rounds of the secondary stage

Information for the start of each round

- (1) Before the start time of each round of the secondary stage, the auction manager must, using the auction system, provide the following information for that round to each bidder who could make a valid bid for a lot that is available for bidding in that round:
 - (a) the start time of the round;
 - (b) the end time of the round;
 - (c) for each lot on which the bidder could make a valid bid in the round:
 - (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 who could bid on the lot, taking into account sections 120 and 121;
 - (d) any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

Posting of results from rounds

- (2) After each round of the secondary stage, the auction manager must provide the following information for that round to each bidder, using the auction system:
 - (a) the bids (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 residual price for that lot;
 - (c) for each lot available for bidding in that round that the bidder could make a valid bid on—the number of bidders who could bid on the lot in the next round, taking into account sections 120 and 121;
 - (d) any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

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Division 2 Rules for the secondary stage

Section 119

Subdivision C—Bidding in the secondary stage

119 Availability of lots in rounds of the secondary stage

- (1) Each residual lot that is available in the secondary stage of the auction is available for bidding in the first round of the secondary stage, and in each later round of the secondary stage, until the final round for that lot.

Note: Section 126 sets out when the final round for a lot occurs.

- (2) Subject to this Division, each bidder may make a bid on a lot of a product that is available to the bidder for bidding during a round.

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

120 Availability of lots to particular bidders

- (1) Subject to subsections (2) to (6), a residual lot is available to a bidder for bidding in the secondary stage if:
 - (a) the bidder could bid on the lot without exceeding the allocation limit for any product; and
 - (b) either:
 - (i) the bidder did not elect to adopt the minimum spectrum requirement for lots of that product; or
 - (ii) if the bidder elected to adopt the minimum spectrum requirement for the lots of that product—the bidder was allocated at least 2 lots of the product in the primary stage.

Bidders affected by allocation limit must nominate available lots

- (2) Subsections (3) to (6) apply to a bidder if:
 - (a) residual lots of 2 or more products are available in the secondary stage of the auction; and
 - (b) the area for 2 or more of those products overlaps to any extent with:
 - (i) the area for any other of those products; or
 - (ii) for the 3.4 GHz auction—the area for a product for which the bidder is a primary winner or a secondary winner in the 3.7 GHz auction; and
 - (c) if the bidder were to bid on 2 or more of those overlapping products (the **affected products**), the bidder would exceed an allocation limit in an area.
- (3) Before the pre-bidding round of the secondary stage, the auction manager must:
 - (a) notify the bidder that the allocation limit affects the bidder in the secondary stage; and
 - (b) advise the bidder of the affected products; and
 - (c) specify a time and date, before the pre-bidding round of the secondary stage, before which the bidder must make a nomination under subsection (4).

- (4) The bidder may nominate in writing the residual lots that are to be available for bidding by the bidder during the secondary stage. The nomination must be such that the bidder could bid on all of the nominated lots without exceeding an allocation limit in an area.
- (5) If the bidder makes a nomination under subsection (4) by the time specified, then the nominated lots are available to the bidder for bidding during the secondary stage and the residual lot of any affected product not nominated is not available to the bidder for bidding.
- (6) If the bidder fails to make a nomination under subsection (4) by the time specified, the residual lots of the affected products are not available to the bidder for bidding.

121 Exclusion from further participation

Failure to pre-bid

- (1) If a bidder does not make a valid pre-bid on a lot in the pre-bidding round of the secondary stage, the bidder cannot make a bid on that lot in any round of the secondary stage.

Failure to bid

- (2) If a bidder does not make a valid bid on a lot in a round of the secondary stage, the bidder cannot make a bid on that lot in a later round of the secondary stage.

Unsuccessful exit bid

- (3) A bidder cannot make a bid on a lot in a round of the secondary stage if, in an earlier round of the secondary stage:
 - (a) the bidder made an exit bid on the lot; and
 - (b) 2 or more other bidders made a continue bid on the lot.

Note: If the only bids on a lot are exit bids, or only one continue bid is made in addition to any exit bids, Subdivision D of this Division applies.

122 Pre-bidding round

Entries by bidders

- (1) After the auction manager has made the entries in section 117 and during the pre-bidding round, a bidder may, using the auction system, indicate each residual lot of a product that the bidder intends to bid for in the first round, and a price at which the bidder intends to bid for the residual lot.

Note: A bidder may also be taken to make an entry in the circumstances specified in section 60.

- (2) If a bidder indicates the bidder intends to bid for a residual lot in the pre-bidding round, the bidder has made a **pre-bid** for the residual lot.

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Section 123

Note: If a bidder makes a pre-bid for a residual lot, that pre-bid is the bid in the first round unless the bidder makes a bid at a different price: see subsections 123(6) and (7). If a bidder does not make a pre-bid for a residual lot, the bidder cannot make a bid for that lot in any round: see paragraph 124(1)(c).

Validity rules for bids in pre-bidding round

- (3) A pre-bid entered in the pre-bidding round is valid if:
- the pre-bid is on a lot that is available to the bidder for bidding in the secondary stage; and
 - the price entered is at least the starting price for a lot of the product.

Entries to be made known to each bidder

- (4) After the end of the pre-bidding round, the auction manager must provide to each bidder, using the auction system, the pre-bids entered by that bidder in the pre-bidding round.

123 Making bids

- (1) A bidder is entitled to bid in a round of the secondary stage unless there are no residual lots available in the round on which the bidder could make a valid bid.

Note: Section 124 is about the validity of bids.

- (2) In the secondary stage, a bid is made on a single residual lot.
- (3) A bid for a residual lot in a round consists of a request for the lot and a price entered by the bidder in relation to the lot.
- (4) Except where subsection 60(1) or 60(2) applies, a bidder's bid is taken to have been made in a round of the secondary stage when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 60(1) allows the auction manager to permit a bid to be made other than by using the auction system, in certain circumstances. Subsection 60(2) allows the auction manager to permit a bid to be made after a round of the secondary stage has ended, in certain circumstances.

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

Valid pre-bid treated as a bid in the first round

- (6) A valid pre-bid for a residual lot made in the pre-bidding round is treated as a bid made for that lot in the first round of the secondary stage, at the price entered in making the pre-bid.
- (7) Subsection (6) is subject to any other valid bid made by the bidder on the lot in the round.

124 Validity of bids

- (1) A bid for a residual lot in a round of the secondary stage is valid if all of the following apply to the bid:
 - (a) except where subsection 60(2) applies, the bid is received by the auction system between the start time and end time of the round;
 - (b) the bid is on a lot that is available to the bidder for bidding in the secondary stage (see section 120);
 - (c) the bidder is not excluded from bidding on the lot by section 121;
 - (d) the price entered by the bidder in making the bid is not less than:
 - (i) for the first round—the starting price for the lot; or
 - (ii) for a later round—the specified price of the lot in the previous round;
 - (e) the price entered by the bidder in making the bid is a multiple of one hundred.

Note: For starting prices, see paragraph 21(1)(d) or 24(1)(a).

Continue bid

- (2) A valid bid on a lot in a round of the secondary stage is a ***continue bid*** if the price entered by the bidder equals or exceeds the specified price of the lot for that round.

Note: A bidder may also be taken to have made a continue bid on a lot, see section 125.

Exit bid

- (3) A valid bid on a lot in a round of the secondary stage is an ***exit bid*** if the price entered by the bidder is less than the specified price of the lot for that round.

Note: A bidder may also be taken to have made an exit bid on a lot, see section 125.

Specified price

- (4) The ***specified price*** for a lot for a round in the secondary stage, means the sum of the following, rounded up to the nearest hundred:
 - (a) either:
 - (i) for the first round—the starting price for the lot; or
 - (ii) for any other round in the secondary stage—the specified price for the lot for the previous round; and
 - (b) the bid increment percentage for the lot multiplied by the price applicable to the round under paragraph (a).

Note: 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 therefore no ***specified price*** for the lot.

125 Carry forward of certain continue bids

- (1) This section applies if:
 - (a) a bidder makes a continue bid on a lot in a round of the secondary stage;and

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- (b) the price (the *advance price*) entered by the bidder in making the bid equals or exceeds the specified price for the lot for the round.

Bid carries forward as continue bid

- (2) In any later round of the secondary stage in which the advance price equals or exceeds the specified price, the bid is treated as a continue bid on the lot.

Bid converts to exit bid

- (3) In the first round of the secondary stage in which the advance price is less than the specified price, the bid is treated as an exit bid.

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

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

- (a) for round $N+1$, the specified price is \$110,000, and the bid is taken to be a continue bid for round $N+1$;
- (b) for round $N+2$, the specified price is \$121,000, and the bid is taken to be a continue bid for round $N+2$;
- (c) for round $N+3$, the specified price is \$133,100, and the bid is taken to be an exit bid for round $N+3$.

Actual bids take priority

- (4) Subsections (2) and (3) are subject to any other bid made by the bidder on the lot in the round.

References to valid bids

- (5) To avoid doubt, a reference in this Division to a valid bid includes a reference to a continue bid or exit bid that this section treats as having been made.

Subdivision D—Bringing the secondary stage to an end

126 Conclusion of bidding on a lot

When bidding ends

- (1) A round of the secondary stage is the *final round* for a lot if it is the first round in which:
- (a) only one valid 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 valid bids are made on the lot.

Determining the winner

- (2) The *secondary winner* for a lot for which the final round has occurred is the bidder who made the final high bid on the lot.

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Meaning of final high bid

- (3) For a lot other than a lot for which no valid bids were made in the first round of the secondary stage, the **final high bid** is the bid determined under column 2 of the applicable item of the table.

Determining the final high bid for a lot		
Item	Column 1 If:	Column 2 The final high bid is:
1	only one valid bid was made on the lot in the final round for the lot	that bid
2	one continue bid was made on the lot in the final round for the lot	that continue bid
3	(a) no continue bid was made on the lot in the final round for the lot; and (b) two or more exit bids were made on the lot in the final round for the lot; and (c) one of those exit bids (the high exit bid) was greater than each of the other exit bids	the high exit bid
4	(a) no continue bid was made on the lot in the final round for the lot; and (b) two or more exit bids were made on the lot in the final round for the lot; and (c) two or more of those exit bids were equal (the tied exit bids); and (d) the tied exit bids were greater than each other exit bid mentioned in paragraph (b).	the bid made by the bidder selected under subsection (4).

Tiebreaker process

- (4) For item 4 of the table, the bidder will be selected from the bidders who made the tied exit bids using a pseudorandom process.

Unallocated lots

- (5) If no valid bids are made on the lot, the lot is not allocated in the secondary stage.

Note: See section 148.

127 End of rounds of the secondary stage

- (1) Subject to subsection (3), the rounds of the secondary stage will end immediately after the last round of the secondary stage.

Meaning of last round of the secondary stage

- (2) A round in the secondary stage is the **last round of the secondary stage** if:

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- (a) the round was a round for bids on one or more lots; and
- (b) after the round, the final round for all of the lots available in the secondary stage has occurred.

Exception for tiebreaker process

- (3) If:
 - (a) the final round for a lot is also the last round of the secondary stage; and
 - (b) the pseudorandom process referred to in subsection 126(4) must be conducted to determine the final high bid for one or more of those lots;then the rounds of the secondary stage end immediately after that process or those processes have been conducted.

Auction manager must announce end of rounds of secondary stage

- (4) After the rounds of the secondary stage end, the auction manager must tell each bidder, using the auction system, that the rounds of the secondary stage have ended and that the auction will progress to the assignment stage.

128 Allocation of lots to secondary winners

The secondary winner for a lot is allocated that lot.

Note: This section is subject to section 71 (about affiliations that ACMA notifies during the primary stage or secondary stage of an auction).

129 Determination of secondary prices

- (1) The **secondary price** to be paid by a secondary winner for all residual lots allocated to the secondary winner in the secondary stage is the sum of the residual prices of all the residual lots allocated to the secondary winner.

Note: This section relates to Division 7 of Part 5 of this instrument for the purposes of section 294 of the Act and is disallowable under section 42 of the *Legislation Act 2003*.

- (2) The **residual price** for a residual lot of a product in the secondary stage is:
 - (a) if there was only one valid bid on the lot—the starting price for the lot; or
 - (b) if there was more than one valid bid on the lot—the highest bid made for the lot by any bidder, during any round of the secondary stage, other than the final high bid.

130 Results of the secondary stage

- (1) After the secondary winners and secondary prices are determined, the auction manager must tell each secondary winner, using the auction system:
 - (a) the lots of each product allocated to the secondary winner; and
 - (b) the residual price for the allocated lot of each product and the secondary price to be paid by the secondary winner for all allocated lots.

- (2) After the secondary winners and secondary prices are determined, the auction manager must tell all bidders:
 - (a) the total number of secondary winners allocated at least one residual lot;
and
 - (b) which residual lots were allocated.

131 End of the secondary stage

- (1) The auction manager must tell each primary winner and each secondary winner, the sum of:
 - (a) the primary price; and
 - (b) the secondary price;for all the allocated lots, in the primary stage or secondary stage, of each product of that winner.
- (2) Immediately after the auction manager provides the results in accordance with section 130, the auction manager must tell each bidder that the secondary stage is completed.

Division 3—Rules for the assignment stage

Subdivision A—Application

132 Application of Division

- (1) This Division applies to the 3.7 GHz auction and the 3.4 GHz auction.

Note: Subsection 59(3) requires the assignment stage of an auction to be conducted in accordance with this Division.
- (2) For each auction, this Division applies to the following:
 - (a) each lot allocated to a bidder in the primary stage of the auction;
 - (b) each lot allocated to a bidder in the secondary stage (if any) of the auction;
 - (c) for the 3.4 GHz auction—each leftover lot (if any) not directly allocated under Division 1 of Part 5 of this instrument.

Note: Because of paragraph (2)(c), some provisions of this Division are relevant only to the 3.4 GHz auction.
- (3) This Division provides for:
 - (a) the assignment of frequency ranges to lots referred to in paragraphs (2)(a) and (b); and
 - (b) for the 3.4 GHz auction—an allocation of leftover lots referred to in paragraph (2)(c).

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Subdivision B—Arrangements for assignment stage

133 Determination of frequency range options

- (1) For each product of which at least one lot was allocated to a bidder in the primary stage or secondary stage (if any), the auction manager must determine a list of frequency range options available to the bidder that complies with this section.
- (2) Each frequency range option for a bidder must be a contiguous frequency range corresponding in bandwidth to the total lot bandwidth of the lots of the product allocated to the bidder in an earlier stage of the auction.
- (3) If a bidder is participating in a given assignment round for more than one product, the auction manager may determine frequency range options available to the bidder that deal with the products as a group, providing the requirements of subsection (2) is met for each individual product in the group.

3.4 GHz auction—adjustment of options if assignment stage includes leftover lots

- (4) Subsection (5) applies to the 3.4 GHz auction, if one or more leftover lots of a product were not directly allocated under Division 1 of Part 5 of this instrument.
- (5) Despite subsection (2), each frequency range option for the product that is the adjacent product (within the meaning of the marketing plan) to a leftover lot that was not directly allocated must:
 - (a) include the frequency of the leftover lot; and
 - (b) correspond in bandwidth to the sum of:
 - (i) the total lot bandwidth of the lots of the product allocated to the bidder in an earlier stage of the auction; and
 - (ii) 2.5 MHz (which is the lot bandwidth for the leftover lots).

Note: The winning bidder for this frequency range option will be allocated the leftover lot under section 143.

134 Auction manager must make frequency range options available

At least 24 hours before the start of the first assignment round, the auction manager must provide each bidder participating in the assignment stage with the list of frequency range options available to the bidder in each of the assignment rounds for the lots of a product that were allocated to the bidder in the primary stage or secondary stage.

135 Scheduling of products and rounds

- (1) After the completion of the primary stage and secondary stage (if any), the auction manager must announce:
 - (a) the anticipated start time and end time of each assignment round; and
 - (b) the product or products that will be the subject of each assignment round.

- (2) There must be at least 48 hours between the completion of the secondary stage (or the primary stage, if there is no secondary stage) and the start of the first assignment round.
- (3) Assignment rounds must start and end between 9.00 am and 5.00 pm on working days.
- (4) The scheduling of assignment rounds between those times is at the auction manager's discretion.
- (5) There is no minimum or maximum length for an assignment round, and no minimum or maximum length for the interval between 2 rounds.
- (6) The auction manager has discretion over the duration of assignment rounds.
- (7) The auction manager must set the order in which the products are the subject of assignment rounds.
- (8) A product must not be the subject of more than one assignment round, but 2 or more products may be the subject of one assignment round.
- (9) The auction manager may, at any time, modify the schedule of assignment rounds. If this occurs, the auction manager must tell all bidders in writing of the change as soon as practicable.

Subdivision C—Bidding in the assignment stage

136 Availability of a product for bidding in rounds of the assignment stage

In a round of the assignment stage, the only products available for bidding are the product or products that the auction manager has announced will be the subject of the assignment round (see paragraph 135(1)(b)).

Note: In the assignment stage, there is only one round for each product.

137 Making bids

- (1) A bidder is entitled to bid in an assignment round if, in the primary stage or secondary stage (if any), the bidder was allocated at least one lot of a product that is the subject of the assignment round.
- (2) A bidder who is entitled to bid in an assignment round is an *assignment bidder* in the round.
- (3) A bid in the assignment stage consists of:
 - (a) the frequency range option that is being bid for; and
 - (b) a bid price for the frequency range option that is a multiple of one hundred.

Note: If there is only one frequency range option for each assignment bidder in a round, the bidders do not need to bid in the round: see section 140.

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- (4) For each option in the list of frequency range options determined for a bidder, the bidder may (subject to subsection (6)) make one bid.
- (5) Except where subsection 60(1) or 60(2) applies, a bid is taken to have been made in an assignment round when the bid has passed data validation checks that are performed by the auction system.

Note: Subsection 60(1) allows the auction manager to permit an assignment bid to be made other than by using the auction system, in certain circumstances. Subsection 60(2) allows the auction manager to permit an assignment bid to be made after an assignment round has ended, in certain circumstances.

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

138 Validity of assignment bids

- (1) A bid in the assignment stage is valid if:
 - (a) except where subsection 60(2) applies, the assignment bid is received between the start time and end time of the assignment round for the product or group of products; and
 - (b) the bid is for a frequency range option for lots of a product that were allocated to the bidder in the primary stage or secondary stage (if any) of the auction; and
 - (c) the bid is for a frequency range option in the list of frequency range options determined for the bidder under section 133; and
 - (d) the bid price is a multiple of one hundred.

Note: Subsection 60(2) allows the auction manager to permit an assignment bid to be made after an assignment round has ended, in certain circumstances.

- (2) A valid bid in the assignment stage is an *assignment bid*.

Note: A bidder may also be taken to have made an assignment bid, see sections 139 and 140.

139 Deemed zero dollar bids

If a bidder does not make an assignment bid for a frequency range option determined for the bidder under section 133, the bidder is treated as having made an assignment bid for the option with a bid price of zero dollars.

140 Assignment rounds in which bidding is not required

- (1) This section applies if, for an assignment round for a product, there is only one frequency range option available to each assignment bidder (an *affected bidder*) who was allocated at least one lot of the product.
- (2) If this section applies:
 - (a) bidders do not make bids using the auction system in the assignment round for the product; and

- (b) instead, each affected bidder is treated as having made an assignment bid with a bid price of zero dollars for the only frequency range option available to the bidder.
- (3) If this section applies, the auction manager must, at least 24 hours before the start of the first assignment round, inform each affected bidder using the auction system of the effect of subsection (2).

Subdivision D—Bringing the assignment stage to an end

141 Determination of winning assignment bids for an assignment round

- (1) After an assignment round ends, the auction manager must tell each assignment bidder in the round the frequency range option in its winning assignment bid.

Note: This section relates to Division 7 of Part 5 of this instrument for the purposes of section 294 of the Act, and is disallowable under section 42 of the *Legislation Act 2003*.
- (2) A **winning assignment bid** for a product for an assignment round is an assignment bid in the combination of assignment bids for the assignment round that meets the following requirements:
 - (a) only one assignment bid is selected from each assignment bidder for the assignment round;
 - (b) the frequency ranges included in any pair of winning assignment bids for a product, or group of a products, do not overlap;
 - (c) the sum of the bid prices in the assignment bids is maximised;
 - (d) if any lots of a product were not allocated in the primary stage or secondary stage (if any), the unassigned frequency range that will result from those unallocated lots is a contiguous frequency range.
- (3) If more than one combination of assignment bids satisfies subsection (2), the combination that is used to determine the **winning assignment bids** will be selected using a pseudorandom process.
- (4) The **assignment winner** for a frequency range for a product for an assignment round is the assignment bidder whose winning assignment bid was for that frequency range.

142 Determination of assignment price for an assignment round

- (1) After the end of an assignment round, the auction manager must tell each assignment winner in the round the assignment price for its winning assignment bid.

Note: This section relates to Division 7 of Part 5 of this instrument for the purposes of section 294 of the Act, and is disallowable under section 42 of the *Legislation Act 2003*.
 - (2) The **assignment price** for a winning assignment bid is the price determined by the auction manager in accordance with this section.
 - (3) The assignment price for a winning assignment bid:
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Part 6 Auction rules

Division 3 Rules for the assignment stage

Section 142

- (a) must not exceed the bid price for the bid; and
 - (b) may be zero; and
 - (c) if there is only one assignment bidder in the assignment round—must be zero.
- (4) Subject to paragraphs (3)(a) and (c), a set of assignment prices in the assignment round must be selected so 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, disregarding any assignment bids that could not form part of a combination of assignment bids that satisfies subsection 141(2); and
 - (b) if more than one set of assignment prices satisfies paragraph (a)—the sum of the assignment prices is also minimised; and
 - (c) if more than one set of assignment prices satisfies paragraphs (a) and (b)—it is the solution to the formula in subsection (5).

- (5) For paragraph (4)(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 (4)(a) and (4)(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' allocated 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 subsection 141(2) 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 21(1)(d) or 24(1)(a).

- (6) The assignment price for a winning assignment bid must be rounded to the nearest hundred.

143 3.4 GHz auction—allocation of leftover lots to assignment winners

- (1) This section applies to the 3.4 GHz auction, if one or more leftover lots of a product were not directly allocated under Division 1 of Part 5 of this instrument.
- (2) The assignment winner of a frequency range option that includes the frequency range of a leftover lot (see subsection 133(5)) is allocated the leftover lot.

144 Assignment of frequency

A lot or lots allocated to a bidder in the primary stage or secondary stage (if any) is assigned the frequency range specified in the bidder's winning assignment bid for that product (not including any part of that frequency range that is the frequency range of a leftover lot).

145 Determination of total assignment price

The *total assignment price* to be paid by an assignment winner for the assignment of a frequency range or frequency ranges to lots of a product or group of products in the assignment stage is the sum of the assignment prices for all the assignment winner's winning assignment bids.

146 Results of the assignment stage

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

- (a) the frequency ranges assigned to the lots of each product that were allocated to the assignment winner in the primary stage or secondary stage (if any); and
- (b) any assignment price for the frequency ranges assigned; and
- (c) for the 3.4 GHz auction—the leftover lot or lots (if any) allocated to the assignment winner under section 143.

147 End of the assignment stage

The assignment stage is complete when:

- (a) all assignment rounds have been conducted; and
- (b) the auction manager has, under section 146, notified all those bidders of the results of every assignment round; and
- (c) for the 3.4 GHz auction—the auction manager has notified each assignment winner who has been allocated a leftover lot in accordance with paragraph 146(c).

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Part 7 Miscellaneous

Section 148

Part 7—Miscellaneous

148 Unallocated spectrum

- (1) This section applies to parts of the spectrum that are available in the allocation process but are:
 - (a) not allocated under Division 1 of Part 5, or in the primary stage, secondary stage (if any) or (for the 3.4 GHz auction) in the assignment stage of an auction; or
 - (b) taken to be unallocated under section 71 (about consequence of affiliation) or 154 (about retention of eligibility payment); or
 - (c) not allocated as a result of section 89 (about default).
- (2) The spectrum 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.

149 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 23, section 45, section 50 or paragraph 53(3)(e) or (f).
- (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.

150 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 153.

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

151 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 allocation process.
- (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.

152 The ACMA to provide information to ACCC on request

- (1) The ACCC may request information from the ACMA in relation to the allocation process, 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 an auction;
 - (i) information about the outcomes of the allocation process.

153 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

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- (ii) the breach affected, or may have affected, the outcome of the allocation process; 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 28 before the confidentiality obligation came to an end; or
 - (c) the ACMA is satisfied that the bidder breached section 65; or
 - (d) the bidder failed to give a statement required under section 69; or
 - (e) the bidder is a winning bidder who failed to pay the balance of the total winning price in accordance with section 87; or
 - (f) the applicant or bidder failed to comply with a requirement in a notice given under subsection 150(1).
- (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 allocation 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 155.

154 Effect of retention on winning bidders

If the ACMA makes a decision under subsection 153(1) in relation to a winning bidder:

- (a) despite sections 86 and 88, the ACMA must not issue a spectrum licence to the bidder; and
- (b) the parts of the spectrum assigned to the lots allocated to the bidder under this instrument (including leftover lots allocated under Division 1 of this Part or section 143) are taken to be unallocated.

155 Application to Federal Court for return of retained amount

- (1) An applicant or bidder who has been notified by the ACMA under subsection 153(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.

156 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 allocation procedures set out in this instrument.

157 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.

158 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.