Radiocommunications (Spectrum Licence Allocation) Determination 2000

The AUSTRALIAN COMMUNICATIONS AUTHORITY, under section 60 of the Radiocommunications Act 1992, determines the following procedures to be applied in allocating spectrum licences by auction and, in certain circumstances, at a pre-determined price.

Dated 17 July 2000

R Horton
Acting Chair

G W Luther
Senior Executive Manager
Radiocommunications
Radiocommunications (Spectrum Licence Allocation) Determination 2000

made under the

Radiocommunications Act 1992

Contents

Summary of Allocation System 6

Part 1 Introduction 8

1.1 Name of determination 8
1.2 Commencement 8
1.3 Purpose of determination 8
1.4 Definitions 8
1.5 Approval of forms 11
1.6 Auction manager 12
1.7 Ways in which the ACA gives information 12
1.8 Communicating with ACA 12
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.9 Method of payment of monies to ACA</td>
<td>12</td>
</tr>
<tr>
<td><strong>Part 1A—Limits on Allocations of Spectrum</strong></td>
<td>15</td>
</tr>
<tr>
<td><strong>Division 1—Preliminary</strong></td>
<td>15</td>
</tr>
<tr>
<td>1A.1 Purpose of Part</td>
<td>15</td>
</tr>
<tr>
<td><strong>Division 2—The allocation limits</strong></td>
<td>16</td>
</tr>
<tr>
<td>1A.2 Imposition of allocation limits</td>
<td>16</td>
</tr>
<tr>
<td>1A.2A Bidding not to exceed limits</td>
<td>16</td>
</tr>
<tr>
<td>1A.2B Consequences of exclusion</td>
<td>17</td>
</tr>
<tr>
<td><strong>Division 3—Matters relevant to considering whether applicants are associated</strong></td>
<td>18</td>
</tr>
<tr>
<td>1A.3 Matters relevant to considering whether applicants are associated</td>
<td>18</td>
</tr>
<tr>
<td><strong>Division 4—Procedures before auction</strong></td>
<td>19</td>
</tr>
<tr>
<td>1A.4 ACA to send applications to ACCC</td>
<td>19</td>
</tr>
<tr>
<td>1A.5 Applicants to provide statutory declarations</td>
<td>19</td>
</tr>
<tr>
<td>1A.6 Exclusion of applicants because of failure to make statutory declaration</td>
<td>19</td>
</tr>
<tr>
<td>1A.7 Consequences of exclusion</td>
<td>20</td>
</tr>
<tr>
<td>1A.8 Options available to associated applicants</td>
<td>20</td>
</tr>
<tr>
<td>1A.9 Consequences of withdrawal</td>
<td>21</td>
</tr>
<tr>
<td>1A.10 Consequences of applicants choosing not to withdraw</td>
<td>21</td>
</tr>
<tr>
<td>1A.11 Making a new application</td>
<td>22</td>
</tr>
<tr>
<td>1A.12 New application—limit on acceptance</td>
<td>22</td>
</tr>
<tr>
<td>1A.13 Designation of applicants as associated applicants</td>
<td>22</td>
</tr>
<tr>
<td>1A.14 Consequences of designation as associated applicants</td>
<td>23</td>
</tr>
<tr>
<td><strong>Division 5—Procedures during auction</strong></td>
<td>25</td>
</tr>
<tr>
<td>1A.15 Detection of associated applicants during auction</td>
<td>25</td>
</tr>
<tr>
<td>1A.16 Exclusion of applicants because of failure to make statutory declaration</td>
<td>25</td>
</tr>
<tr>
<td>1A.17 Consequences of exclusion</td>
<td>25</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>IA.18</td>
<td>Designation of associated applicants during auction</td>
</tr>
<tr>
<td>IA.19</td>
<td>Consequences of designation as associated applicants</td>
</tr>
<tr>
<td>IA.20</td>
<td>Effect of designation of associated applicants on bidding</td>
</tr>
<tr>
<td>IA.21</td>
<td>Telling other applicants of designation of associated applicants</td>
</tr>
<tr>
<td></td>
<td><strong>Division 6—Procedures after auction</strong></td>
</tr>
<tr>
<td>IA.22</td>
<td>Successful applicants to make statutory declarations</td>
</tr>
<tr>
<td>IA.23</td>
<td>Exclusion of applicants because of failure to make statutory declaration</td>
</tr>
<tr>
<td>IA.24</td>
<td>Consequences of exclusion</td>
</tr>
<tr>
<td>IA.25</td>
<td>Designation of associated applicants after auction</td>
</tr>
<tr>
<td>IA.26</td>
<td>Consequences of designation as associated applicants</td>
</tr>
<tr>
<td>IA.27</td>
<td>Unsold lots</td>
</tr>
<tr>
<td>IA.28</td>
<td>Moneys payable by a successful applicant</td>
</tr>
<tr>
<td></td>
<td><strong>Division 7—General</strong></td>
</tr>
<tr>
<td>IA.29</td>
<td>Review</td>
</tr>
<tr>
<td>IA.30</td>
<td>Definitions of terms used in this Part</td>
</tr>
<tr>
<td></td>
<td><strong>Part 2 Preparing for the auction</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Division 1—Application and registration</strong></td>
</tr>
<tr>
<td>2.1</td>
<td>Entry fee and eligibility payment</td>
</tr>
<tr>
<td>2.2</td>
<td>Publication of notice by ACA</td>
</tr>
<tr>
<td>2.3</td>
<td>Applicant Information Package</td>
</tr>
<tr>
<td>2.4</td>
<td>Applications</td>
</tr>
<tr>
<td>2.5</td>
<td>Lodging of applications</td>
</tr>
<tr>
<td>2.6</td>
<td>Initial eligibility</td>
</tr>
<tr>
<td>2.7</td>
<td>Eligibility payment</td>
</tr>
<tr>
<td>2.8</td>
<td>Deed of Financial Security or performance payment</td>
</tr>
<tr>
<td>2.9</td>
<td>Lodging of power of attorney</td>
</tr>
<tr>
<td>2.10</td>
<td>Failure to comply with requirements concerning Deed of Financial Security</td>
</tr>
<tr>
<td>2.11</td>
<td>Performance payment</td>
</tr>
<tr>
<td>2.12</td>
<td>Forfeiture and refund of secured monies</td>
</tr>
</tbody>
</table>
Contents

2.13 Register of applicants 41
2.14 Registration of applicants 42
2.15 Publication of bidder identification numbers 43
2.16 Preparation for bidding 43

Division 2-Things the auction manager must do before the auction 45
2.17 Starting bids and increments 45
2.18 Stages of auction, eligibility percentage, waivers and first round 45

Part 3 Allocation for a pre-determined price 46
3.1 Allocation for a pre-determined price without an auction 46
3.2 The pre-determined price 46
3.3 Offer of licence 46
3.4 Payment of balance of pre-determined price 47
3.5 Withdrawal of offers 48
3.6 Default 48

Part 4 The auction 49

Division 1-Auction arrangements 49
4.1 Auction procedure 49
4.2 Rounds of an auction 49
4.3 Schedule for a round 50
4.4 Rounds on a day 50
4.5 Recess days 51
4.6 Auction manager may vary the length of the bidding or results period 51
4.7 Movement to next stage of auction 51

Division 2-Bidding and taking part in the auction 53
4.8 Ways of taking part in the auction 53
4.9 Electronic bidding procedure 53
4.10 Emergency telephone bidding procedure 54
4.11 Identification of registered applicants 55
4.12 Starting and minimum bids 55
4.13 Changing starting and minimum bids 56
## Contents

| 4.14 | Automatic re-bidding | 56 |
| 4.15 | All lots on offer simultaneously | 58 |
| 4.16 | General rules about bidding | 58 |
| 4.17 | Eligibility bidding cap | 59 |
| 4.18 | Bidding activity targets | 60 |
| 4.19 | Loss of eligibility | 60 |
| 4.20 | Waiver | 61 |
| 4.21 | Withdrawal of bids | 62 |
| 4.22 | Loss of eligibility on withdrawal | 62 |
| 4.23 | Withdrawal penalty | 62 |
| 4.24 | Suspension of an applicant | 64 |
| 4.25 | Payment of additional eligibility payment | 64 |
| 4.26 | Consequences of exclusion | 65 |

### Division 3 - Bringing the auction to an end

| 4.27 | Suspension or cancellation of auction | 66 |
| 4.28 | Closing of auction | 67 |

### Part 5 - After the auction

| 5.1 | Allocation of licence to highest bidder | 69 |
| 5.2 | Calculation of balance of bid price | 69 |
| 5.3 | Payment of balance of bid price | 69 |
| 5.4 | Default by successful applicant | 70 |
| 5.5 | Allocation of defaulted lots | 71 |
| 5.6 | Refunds to unsuccessful applicants | 71 |

### Part 6 - Miscellaneous

| 6.1 | Unsold lots | 73 |
| 6.2 | Liability of ACA | 73 |
| 6.3 | Recovery of damages by ACA | 73 |
| 6.4 | Giving of information by ACA | 73 |
| 6.5 | Information provided by applicant | 74 |

### Part 7 - Revocation

| 7.1 | Revocation | 75 |

### Schedule 1 - Procedures for bid transmission (including automatic re-bids and withdrawal of bids) and authentication

|  | 76 |
Summary of Allocation System

Note  This summary is intended to give an overview of the allocation system. Readers who want to fully understand how the system works should study the entire determination in detail.

This determination makes provision for the allocation of parts of the spectrum that have been identified as being available for allocation under section 36 or for re-allocation under section 153B of the Radiocommunications Act 1992 (the Act). The ACA proposes to allocate spectrum licences by a simultaneous ascending bid multiple round auction of spectrum allocation lots that then become the subject of spectrum licences. If applicants’ needs in all areas can be met without going to auction, the licences will be offered for a pre-determined price. Details of the overall scheme for allocation and issue of spectrum licences are set out in the relevant Marketing Plan prepared by the ACA under section 39 or 39A of the Act, as applicable.

Each lot covers an area and a frequency band — for details, see the relevant Marketing Plan. Each lot has a lot rating reflecting its relative value, determined by the ACA. People wishing to bid are asked to nominate an aggregate amount of lot ratings for the lots they wish to acquire, and this will be regarded as their "eligibility" in the auction. People wishing to obtain a licence by this process must register, pay an entry fee and make a refundable proportional eligibility payment based on the eligibility they nominate. The eligibility payment is held against payment of bid withdrawal penalties as a means of discouraging applicants from abusing the auction process. An additional eligibility payment may also be required during the course of the auction if the amount of eligibility payment which has already been paid falls below 10 % of the total of high bids of an applicant.

The auction will be conducted electronically. Registered applicants may bid on any number of lots, in any combination, provided that their bidding activity does not exceed their eligibility. Applicants may nominate to be eligible for all lots (within the bidding limits), but they must make the necessary eligibility payment. Applicants interested in specific areas, or particular bands, need only make a sufficient eligibility payment to cover these.
Bidding will take place over several rounds with the results of each round being notified to registered applicants by the ACA. Registered applicants may withdraw bids during the round, but will forfeit some or all of their eligibility payment if the lot ultimately sells for less than the bid that was withdrawn.

Registered applicants will be subject to activity requirements that require them to be active on a percentage of their eligibility. This percentage increases in stages during the auction. Registered applicants not meeting the activity requirements will have their eligibility proportionally reduced.

At the end of the allocation process, if all necessary pre-conditions are fulfilled, the ACA will aggregate the lots into licences to be issued to the successful applicants.
Part 1  Introduction

1.1  Name of determination
This determination is the *Radiocommunications (Spectrum Licence Allocation) Determination 2000*.

1.2  Commencement
This determination commences on 17 July 2000.

1.3  Purpose of determination
This determination sets out the procedures for allocating spectrum licences:
(a) by a simultaneous ascending bid multiple round auction of spectrum allocation lots that then become the subject of spectrum licences; and
(b) for a pre-determined price.

Note  For paragraph 1.3 (b), see Part 3.

1.4 Definitions
(1) In this determination, unless the contrary intention appears:

*ACN or ARBN* means the relevant registration numbers for a company or body under the Corporations Law.

*Act* means the *Radiocommunications Act 1992*.

*activity target*, for a registered applicant during a round in a stage, means the figure obtained by multiplying the amount of the registered applicant’s eligibility for that round by the percentage of eligibility fixed by the auction manager for that stage under paragraph 2.18 (b).

*additional eligibility payment* means an additional payment worked out under section 4.25.

*Applicant Information Package* has the meaning given by section 2.3.

*application documents* means the documents listed in subsection 2.4 (2).
**application form** means the document approved by the ACA under paragraph 1.5 (1) (a).

**area** means the geographic area under the Marketing Plan.

**auction** means an auction held by the ACA in accordance with this determination to allocate spectrum lots.

**auction centre** means the auction centre located at the Canberra office of the ACA.

**auction computer system** means the computer system operated by the ACA for the purpose of an auction.

**auction manager** means the person appointed under section 1.6.

**balance of the bid price** means the amount worked out in accordance with section 5.2.

**balance of the pre-determined price** means the amount worked out in accordance with section 3.2.

**bidder identification number** means the number assigned to an applicant by the ACA under paragraph 2.14 (2) (a).

**bidding instruction** means:
(a) a bid on a lot; or
(b) an automatic re-bid on a lot; or
(c) a bid withdrawal on a lot; or
(d) the exercise of a waiver; or
(e) an instruction to the auction manager not to apply the automatic waiver.

**closing date** means the date mentioned as the closing date for applications in the notice published under paragraph 2.2 (1)(d).

**Deed of Acknowledgment** means the document approved by the ACA under paragraph 1.5 (1) (c).

**Deed of Financial Security** means the document approved by the ACA under paragraph 1.5 (1) (b).

**eligibility** means the registered applicant’s initial eligibility as varied during the auction.

**eligibility payment** means the eligibility payment worked out under section 2.7.

**entry fee** means the entry fee payable by an applicant.
high bid, for a round, means the highest bid made on the lot in the bidding round or the bid taken to be the high bid under s.4.14(4).

initial eligibility means an applicant’s initial eligibility nominated in accordance with section 2.6.

lot means a part of the spectrum identified as a lot by the ACA in the Marketing Plan.

lot rating has the meaning given by the Marketing Plan.

Marketing Plan, for the auction of part of the spectrum, means the Marketing Plan prepared by the ACA for issuing spectrum licences in respect of that part of the spectrum.

Note  Copies of the Marketing Plan are available from the ACA.

performance payment means monies lodged with the ACA under section 2.11.

pre-determined price, for a licence for 1 or more lots, means the price, determined under section 3.2, of the licence for the lot or lots.

register means the register of applicants maintained by the ACA under section 2.13.

registered applicant means an applicant registered under section 2.14.

RTGS means the real-time gross settlement electronic payment system operated by the Reserve Bank of Australia and referred to in subsection 1.9(2).

stage means a group of successive rounds of an auction to which the same percentage of eligibility, fixed under paragraph 2.18(b), applies.

starting bid has the meaning given by subsection 2.17(2).

successful applicant has the meaning given by section 5.1.

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

Note  The following terms, used in this determination, are defined in the Act and have the meanings given to them by that Act:

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACA</td>
<td>spectrum</td>
</tr>
<tr>
<td>frequency band</td>
<td>spectrum licence</td>
</tr>
<tr>
<td>marketing plan</td>
<td></td>
</tr>
</tbody>
</table>
(2) In this determination:
   (a) a reference to time is a reference to that time in the Australian Capital Territory; and
   (b) a reference to an amount of money is a reference to that amount in Australian currency; and
   (c) the range of numbers that identifies a frequency band includes the higher, but not the lower, number.

(3) If a number worked out in accordance with this determination is not a whole number:
   (a) the number is to be rounded to the nearest whole number; and
   (b) a number with 5 in the first decimal place, is to be rounded up to the nearest whole number.

(4) A registered applicant is active on a lot in a round if:
   (a) for a round to which the starting bid applies — the applicant makes a bid that equals or exceeds the starting bid; and
   (b) for a round other than a round to which the starting bid applies:
      (i) the applicant makes a bid that equals or exceeds the minimum bid on the lot worked out in accordance with section 4.12; or
      (ii) the applicant holds the high bid on the lot from the previous round and does not withdraw that high bid in the current round.

1.5 Approval of forms

(1) The ACA must, by writing, approve the following documents:
   (a) an application form;
   (b) a Deed of Financial Security that complies with section 2.8;
   (c) a Deed of Acknowledgment, that includes a statement to the effect that the applicant agrees, if successful in respect of a lot, to pay the ACA the balance of the bid price for the lot as required by section 5.3.

(2) The ACA may approve more than 1 form of a document.
1.6 **Auction manager**

The ACA must, by writing, appoint a person (the *auction manager*) to manage an auction.

1.7 **Ways in which the ACA gives information**

(1) The ACA may give any information or documents to a person under this determination:
   - (a) by letter; or
   - (b) by telephone; or
   - (c) by fax.

(2) The ACA may make information available to a person:
   - (a) if the person is using the auction computer system — by making the information available on the system; or
   - (b) by publishing the information on the internet.

1.8 **Communicating with ACA**

Once an auction has started, a form or notice required to be given to the ACA in relation to the auction must be given by fax to a number shown in the Applicant Information Package as the number for giving notices by fax.

*Note* Bidding must, except in emergencies, be done electronically: see section 4.8.

1.9 **Method of payment of monies to ACA**

(1) All payments to the ACA must be made in Australian currency.

(2) Monies due to the ACA for any of the purposes set out in subsection (3) must be paid using the real-time gross settlement system (RTGS) operated by the Reserve Bank of Australia.

(3) Monies due to the ACA for the following purposes must be paid by the date required by this determination and in accordance with this determination:
   - (a) entry fee;
   - (b) eligibility payment;
(c) any additional eligibility payment as required by section 4.25
(d) any further eligibility payment as required by subsection 2.5 (3);
(e) monies payable under a performance payment;
(f) 10% of the balance of the bid price;
(g) the remainder of the balance of the bid price;
(h) the balance of the pre-determined price.

(4) An applicant making a payment must notify the auction centre and the Receiver of Public Monies by fax of the proposed payment before making the transfer.

Note See paragraph 2.3 (1) (n) for notification of relevant fax numbers.

(5) For subsection (4), each notification must include the following details:
(a) the name and address of the applicant;
(b) if the applicant is an Australian registered company, the ACN or ARBN of the applicant;
(c) the ACA client number of the applicant (if available);
(d) the name, address, telephone and fax numbers of the contact person regarding the funds transfer;
(e) the amount of the payment being transferred;
(f) the purpose for which the payment is being made.

(6) A payment by RTGS must be paid into the ACA’s bank account, details of which are as follows:
(a) Bank — Reserve Bank of Australia;
(b) Branch — Canberra City;
(c) BSB number — 092-009;
(d) Account number — 92276-5;
(e) Account name — Australian Communications Authority Clearing Account.
(7) A payment by RTGS is not effective unless the funds have been paid into the ACA’s bank account by the date required by this determination.

(8) The applicant must pay all bank charges and Government imposed duties in respect of the transfer, and a payment will not be regarded as having been made unless the full amount net of any such charges is received by the ACA.

Example  A payment by RTGS for an entry fee or an eligibility payment must have been credited to the ACA’s bank account by the time the application documents are lodged. The applicant must pay all bank charges and Government duties on the transfer.
Part 1A—Limits on Allocations of Spectrum

Division 1—Preliminary

1A.1 Purpose of Part

The purpose of this Part is:

(a) to impose limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under this determination, may be used by:
   (i) a person; or
   (ii) a specified group of persons; and
(b) to determine procedures to ensure those limits are not exceeded.

Notes:

1. The Minister has given a written direction to the ACA under subsection 60(10) of the Act about the exercise of the ACA’s power to determine procedures to be applied in allocating spectrum licences for imposing limits on the aggregate parts of the spectrum that may be used by a person or specified group of persons.

2. The following terms used in this Part are defined in section 1A.30 at the end of this Part:
   
   • associate
   • major city
   • relevant agreement
   • specified group of persons.

3. Other terms used in this Part are defined in section 1.4.
Division 2—The allocation limits

1A.2  Imposition of allocation limits

(1)  This section imposes the limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under this determination, may be used by particular classes of persons.

(2)  (a) Telstra and any related body corporate may not use spectrum in the frequency bands 3425 MHz to 3492.5 MHz and 3542.5 MHz to 3575 MHz to operate radiocommunications devices anywhere within a major population auction lot area;

(b)  Telstra and any related body corporate may not use more than an aggregate of 22 MHz of spectrum in the 3442.5 MHz to 3475 MHz band to operate radiocommunications devices within an auction lot area which is not a major population auction lot area;

(c)  Telstra and any related body corporate may not use more than an aggregate of 22 MHz of spectrum in the 3542.5 MHz to 3575 MHz band to operate radiocommunications devices within an auction lot area which is not a major population auction lot area; and

(d)  no other person or specified group of persons may use more than an aggregate of 67.5 MHz of the spectrum in the frequency bands 3425 MHz to 3492.5 MHz and 3542.5 MHz to 3575 MHz to operate radiocommunications devices within a major population auction lot area.

1A.2A  Bidding not to exceed limits

(1)  A person or specified group of persons must not bid in a way that would be in breach of the limits in section 1A.2(2).

(2)  A person or specified group of persons who bids in breach of the limits will be excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.
1A.2B **Consequences of exclusion**

(1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because of bidding in contravention of the limits in subsection 1A.2(2) (an *excluded applicant*) is not refundable.

(2) The eligibility payment of an excluded applicant is refundable.

(3) However, before refunding the eligibility payment of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.

(4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the excluded applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

*Note:* Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment cannot be refunded until then.
Division 3—Matters relevant to considering whether applicants are associated

1A.3 Matters relevant to considering whether applicants are associated

When considering, for this Part, whether 2 or more applicants are associated, the ACA must have regard to:

(a) statutory declarations made under section 1A.5, 1A.15 or 1A.22; and
(b) any advice given by the ACCC in response to the material sent to it under section 1A.4; and
(c) any other matter that the ACA considers relevant.
Division 4—Procedures before auction

1A.4 ACA to send applications to ACCC
The ACA must send a copy of each applicant’s application documents to the ACCC within 5 working days of receiving them.

1A.5 Applicants to provide statutory declarations
(1) No more than 10 working days after the closing date, the ACA must:
   (a) give each applicant details about the identity of all other applicants; and
   (b) ask each applicant to make a statutory declaration stating whether the applicant is an associate of another applicant and, if so, giving details of the other applicant and the association.

(2) The ACA must state a date, not less than 10 working days after the date of the request, by which the statutory declaration must be received by the ACA.

(3) Each applicant must give the ACA a statutory declaration in accordance with this section.

(4) A statutory declaration by an applicant that is a corporation must be made by a director of the corporation.

1A.6 Exclusion of applicants because of failure to make statutory declaration
An applicant who does not give the ACA a statutory declaration in accordance with section 1A.5 is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.
1A.7 Consequences of exclusion

(1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because of failure to make a statutory declaration (an excluded applicant) is not refundable.

(2) The eligibility payment of an excluded applicant is refundable.

1A.8 Options available to associated applicants

(1) If the ACA considers that a group (an applicant group) of 2 or more applicants are associated with one another, the ACA must:

(a) return the application documents to each member of the applicant group; and

(b) tell each member the basis on which the ACA considers them to be associated; and

(c) tell the members of the group of the options available to them under subsection (2); and

(d) tell each member of the effect of section 1A.10.

(2) The following options are available to the members of the group:

(a) withdrawing applications in accordance with subsection (3); or

(b) choosing not to withdraw.

(3) For subsection (2), the following ways of withdrawing applications are permissible:

(a) withdrawal of applications by all members of the group (whether or not the group then takes advantage of section 1A.11 to make a new application); or

(b) withdrawal of applications by all but 1 member of the group.

(4) Within 10 days of the ACA returning their application documents, the members of the group must tell the ACA, in writing, which option they propose to take, by giving the ACA a completed approved form appropriate to the proposed option and, if an application is to be made under section 1A.11, a completed application form for the purposes of that section.
Note: By virtue of subsection 1A.11 (3), other documents (referred to in paragraphs 2.4 (2)(b) and (c)), the entry fee and eligibility payment must all accompany the completed application form.

1A.9 Consequences of withdrawal

(1) The entry fee of an applicant who withdraws is not refundable.

(2) The eligibility payment of an applicant who withdraws is refundable.

1A.10 Consequences of applicants choosing not to withdraw

(1) A decision of members of an applicant group choosing not to withdraw in accordance with paragraph 1A.8 (2) (b), has the following consequences:

(a) each member of the group (member) will be jointly and severally liable for all bids made using the common bidder identification number and encryption keys and transaction code keys allocated to members;

(b) spectrum licences will only be issued for lots on which the members are successful in accordance with an authority and direction, in the approved form, given jointly by the members to the ACA indicating how the spectrum won by them at auction is to be allocated between them, within the allocation limits;

(c) the applicant group will be subject to the same consequences as a single applicant under subsection 1A.14 (2).

(2) Members choosing not to withdraw must acknowledge the consequences mentioned in subsection (1) when completing the approved form.
1A.11  Making a new application

(1) If all applications by the members of an applicant group are withdrawn, a new applicant may apply to the ACA for registration.

(2) The new applicant must be a legal entity made up of only 1 or more members of the same applicant group who have withdrawn their individual applications under paragraph 1A.8 (3) (a) and who wish to take part in making the new application.

(3) Section 2.4 applies to a new application, except that the new application must be made by using the approved form, and not by using the application form referred to in that section.

(4) The new application must be accompanied by a statutory declaration by the new applicant that it is not associated with any person except a person making up the entity.

1A.12  New application—limit on acceptance

The ACA must not accept a new application unless it is satisfied that the new applicant is not associated with:

   (a) any other applicant who has not withdrawn; or
   (b) if there is, or may be, another new applicant—the other new applicant.

1A.13  Designation of applicants as associated applicants

(1) If an applicant group does not tell the ACA that it is exercising 1 of the options under subsection 1A.8 (2) within the period mentioned in subsection 1A.8 (4), the ACA must designate the members of the group who have not withdrawn as associated applicants.

(2) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the Administrative Appeals Tribunal.
Notes:
1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under s 27B of the Administrative Appeals Tribunal Act 1975.
2. For the right to have a decision designating applicants as associated applicants reviewed by the Administrative Appeals Tribunal, see section 1A.29.

1A.14 Consequences of designation as associated applicants

(1) If the ACA designates members of a group of applicants as associated applicants (a designated applicant group), the members of the group are to be taken, for this determination, to be a single applicant.

(2) The ACA must deal with members of a designated applicant group taken to be a single applicant for subsection (1) by:

(a) registering the designated applicant group as a separate bidding entity for the auction; and

(b) issuing a common bidder identification number (BIN), password, and set of encryption keys and transaction code keys for use by all members of the designated applicant group; and

(c) setting the eligibility of each member of the designated applicant group as the sum of the initial eligibility nominated by each member of the group at the time that the member applied for registration under this determination, but so as not to exceed the allocation limits under this determination; and

(d) setting the number of waivers for each member of the designated applicant group at the same number as other applicants who are not members of a designated applicant group; and

(e) accepting the first relevant bidding instruction file mentioned in section 4.9 that is received by the ACA as the only bid file of members of the designated applicant group; and

(f) treating any bid or automatic rebid, bid withdrawal, or exercise of waiver by a member of a designated applicant
group as if it had been made, withdrawn or exercised by each other member of that group.

(3) For subsection (2), a *relevant bidding instruction file* is a bid file that was created using the common bidder identification number and set of encryption keys and transaction code keys mentioned in paragraph (2) (b).

Notes:
1. A BIN is allocated on registration, as are a set of transaction code keys (subsection 2.14 (2)).
2. Acceptance of the first relevant bidding instruction file mentioned in section 4.16 that is received by the ACA as the only bid file of members of the designated applicant group may have the result that other members of the designated applicant group may fail to meet activity levels and so progressively lose eligibility.
Division 5—Procedures during auction

1A.15 Detection of associated applicants during auction
(1) If at any time during the auction the ACA considers that 2 or more applicants, that have not been designated as associated applicants, may be associates, the ACA must:
   (a) suspend the auction from the end of the current round; and
   (b) tell each of the applicants concerned, listing identification details about the other applicants that the ACA believes to be associated and stating the basis of its belief; and
   (c) ask each of the applicants concerned to make a statutory declaration stating whether the applicant is an associate of any of the other listed applicants and, if so, giving details of the listed applicant and the association.

(2) The ACA must state a date, not more than 5 working days after the date of the request, by which the statutory declaration must be received by the ACA.

(3) An applicant asked to make a statutory declaration in accordance with this section must comply with the request.

(4) A statutory declaration by an applicant that is a corporation must be given by a director of the corporation.

1A.16 Exclusion of applicants because of failure to make statutory declaration
An applicant who does not give the ACA a statutory declaration in accordance with section 1A.15 is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.

1A.17 Consequences of exclusion
(1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because of failure to make a statutory declaration (an excluded applicant) is not refundable.
(2) The eligibility payment and additional eligibility payment (if any) of an excluded applicant is refundable.

(3) However, before refunding the eligibility payment and additional eligibility payment (if any) of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.

(4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment and additional eligibility payment (if any) cannot be refunded until then.

1A.18 Designation of associated applicants during auction

(1) If, during the auction, the ACA considers that 2 or more applicants who have not been excluded are associated, the ACA must designate the applicants as associated applicants.

(2) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the Administrative Appeals Tribunal.

Notes:
1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under s 27B of the Administrative Appeals Tribunal Act 1975.
2. For the right to have a decision designating applicants as associated applicants reviewed by the Administrative Appeals Tribunal, see section 1A.29.

1A.19 Consequences of designation as associated applicants

(1) If the ACA designates members of a group of applicants as associated applicants (a designated applicant group), the members of the group are to be taken, for this determination, to be a single applicant.
(2) The ACA must deal with members of a designated applicant group taken to be a single applicant for subsection (1) by:
(a) revoking the bidder identification numbers, encryption code keys and transaction code keys previously issued to the members of the designated applicant group (members); and
(b) issuing a new common bidder identification number (BIN), password, encryption code keys and transaction code keys for use, from the time the auction resumes, to all members; and
(c) setting the eligibility of each member of the designated applicant group as the sum of the current eligibility of each of the members at the end of the round immediately before the suspension of the auction, but so as not to exceed the allocation limits under this determination; and
(d) setting the number of waivers for each member of the designated applicant group at the highest number held by any of the members at the end of the round immediately before the suspension; and
(e) treating any bid or automatic rebid, bid withdrawal, or exercise of waiver by a member of a designated applicant group as if it had been made, withdrawn or exercised by each other member of that group.

1A.20 Effect of designation of associated applicants on bidding

(1) When the ACA revokes bidder identification numbers of members of a designated applicant group, it will remove any high bid held against those bidder identification numbers.

(2) When the ACA removes a high bid:
(a) the ACA is taken to be the highest bidder for the lot, at the next highest bid (whether the next highest bid was made in that round or a previous round); and
(b) the ACA will be identified by the bidder identification number 9999; and
(c) the minimum bid for the lot in the next round is equal to that next highest bid.
(3) For subsection (2), if there is no next highest bid for a lot:
(a) the amount of the high bid to be recorded is taken to be zero; and
(b) the starting bid for the lot will be worked out under subsection 2.17(2)

Note: No bid withdrawal penalty will apply to an applicant if the ACA removes a high bid under subsection 1A.20 (1).

(4) Before the auction restarts, the ACA must recalculate the results of the auction at the end of the round in which the suspension of the auction took effect, taking into account the removal of any high bids under subsection (1) and publish these using the auction computer system and the internet.

1A.21 Telling other applicants of designation of associated applicants

(1) If the ACA designates any applicants as associated applicants under section 1A.18, the ACA must tell all other applicants before the auction restarts.

(2) The ACA must also tell all other applicants:
(a) that the ACA will reject any instructions about taking part in the auction (ie bidding, withdrawal of a bid or waiver) received from a member of a designated applicant group if those instructions are inconsistent with earlier instructions that the ACA has received from another member of that group; and
(b) the date and time of the resumption of the auction.

(3) For paragraph (2) (a), instructions are taken to be inconsistent with earlier instructions if it is not open to a single applicant, under this determination, to give the subsequent instructions.

Note: Members of a designated applicant group will have the same BIN.
Division 6—Procedures after auction

1A.22 Successful applicants to make statutory declarations
After the close of the auction, but before licences are issued, the ACA must give each successful applicant identification details of all other successful applicants and ask each successful applicant to make a statutory declaration stating whether the applicant is an associate of any other successful applicant and, if so, giving details of the applicant and the association.

1A.23 Exclusion of applicants because of failure to make statutory declaration
A successful applicant who does not give the ACA a statutory declaration in accordance with section 1A.22 is excluded from obtaining a spectrum licence in the allocation process.

1A.24 Consequences of exclusion
(1) If a successful applicant is excluded from obtaining a spectrum licence, all lots for which the applicant was successful are taken to be unsold lots.

(2) The entry fee of a successful applicant who is excluded from obtaining a spectrum licence because of failure to make a statutory declaration (an excluded applicant) is not refundable.

(3) The eligibility payment and additional eligibility payment (if any) of an excluded applicant is refundable.

(4) However, before refunding the eligibility payment and additional eligibility payment (if any) of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.

(5) In working out the bid withdrawal penalties deductible under subsection (4), all successful bids of the applicant are taken to be withdrawn.
1A.25 Designation of associated applicants after auction

(1) If the ACA considers that 2 or more successful applicants who have not been excluded are associated, the ACA must designate the applicants as associated applicants.

(2) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the Administrative Appeals Tribunal.

Notes:
1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under s 27B of the Administrative Appeals Tribunal Act 1975.
2. For the right to have a decision designating applicants as associated applicants reviewed by the Administrative Appeals Tribunal, see section 1A.29.

1A.26 Consequences of designation as associated applicants

(1) If the ACA designates 2 or more successful applicants as associated applicants, the ACA must combine the lots for which the applicants were successful.

(2) If the issue of a spectrum licence or licences for the combined lots would result in the allocation limits under this determination being exceeded, spectrum licences will be issued only:
   (a) up to the allocation limits; and
   (b) in accordance with an authority and direction, in the approved form, given jointly by the associated applicants to the ACA indicating how the spectrum won by them at auction is to be allocated between them, within those limits.

1A.27 Unsold lots

A lot left unsold because of section 1A.24 or 1A.26 may be allocated in the manner determined by the ACA as if the lot were an unsold lot for section 6.1.
1A.28 Moneys payable by a successful applicant

(1) Imposition of a limitation on allocation to a successful applicant under subsection 1A.26 (2) does not affect the applicant’s obligation to pay, in the instalments mentioned in section 5.3, the balance of the bid price for all lots on which the applicant was the successful bidder.

(2) Each applicant with which the successful applicant is designated as being associated is liable to pay the balance of the bid price under section 5.3.

Note: For balance of the bid price, see section 1.4 and section 5.3.

(3) If the price obtained for a lot when it is allocated under section 1A.27 is less than the highest bid by the successful applicant at the auction, the applicant is liable to pay to the ACA:

(a) the difference between the price obtained and the highest bid; and

(b) the costs (if any) reasonably incurred by the ACA in allocating the lot.

(4) The ACA may deduct from the money paid by the successful applicant to the ACA (including money payable by the successful applicant under subsection (1)) the amount (if any) for which the applicant is liable under subsection (3).

(5) The balance (if any) of the money remaining after the deduction will be refunded to the successful applicant.

(6) If:

(a) a successful applicant does not pay the money payable under subsection (1); or

(b) the amount paid is not enough to satisfy the liability under subsection (3);

the amount due under subsection (3) is a debt due to the ACA and recoverable from the successful applicant in a court of competent jurisdiction.
Division 7—General

1A.29 Review
An applicant who has been designated as an associated applicant may apply to the Administrative Appeals Tribunal for review of the decision within 10 working days of being told of the decision.

1A.30 Definitions of terms used in this Part
(1) In this Part:

allocation limits means the limits on aggregate parts of spectrum for which licences may be allocated to particular applicants under this determination;

applicant means a person who has applied for registration as an applicant under section 2.14 of this determination;

approved form means a form approved by the ACA;

associate, in relation to a person, means:

(a) for a body corporate:

(i) a director or secretary of the body; or
(ii) a related body corporate; or
(iii) a director or secretary of a related body corporate; or
(iv) a business partner of the body; or
(v) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or

(b) for an individual:

(i) the individual’s spouse; or
(ii) another person who, although not legally married to the individual, lives with the individual on a genuine domestic basis as the spouse of the person; or
(iii) a business partner of the individual; or
(iv) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
(v) a body corporate of which the individual is a director or secretary; or
(vi) a body corporate that is related to a body corporate of which the individual is a director or secretary; or
(c) for any person - any other person (other than the ACA) who has a relevant agreement with the person that:
(i) entitles 1 of the parties to the agreement to use spectrum licensed to another person under a spectrum licence that relates to a part of the spectrum referred to in a re-allocation declaration; or
(ii) provides for the acquisition of a spectrum licence that relates to a part of the spectrum referred to in a re-allocation declaration;

corporation has the same meaning as in the Corporations Law;
designated applicant group means a group of applicants designated as associated applicants for a provision of this Part;
director, in relation to a corporation, has the same meaning as in the Corporations Law;
major city means a designated area described in the re-allocation declaration to the extent that the area is within the territorial limits of Australia;
re-allocation declaration means the Radiocommunications (Spectrum Re-Allocation) Declaration 2000 made under section 153B of the Act on 11 April 2000;
related body corporate has the meaning given by the Corporations Law;
relevant agreement means an agreement, arrangement or understanding:
(a) whether formal or informal or partly formal and partly informal; and
(b) whether written or oral or partly written and partly oral; and
(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;
other than an agreement between carriers provided for by or under the Telecommunications Act 1997, Part XIC of the Trade Practices Act 1974 or the Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997;
specified group of persons means a person and all the associates of that person.

*Note: ACCC* is defined in the Act.

(2) For this Part, 2 or more specified groups of persons having 1 member in common are taken to be 1 specified group of persons.
Part 2 Preparing for the auction

Division 1 Application and registration

2.1 Entry fee and eligibility payment

Before the ACA publishes a notice inviting applications for an auction it must set:
(a) the amount of the entry fee; and
(b) the amount of the eligibility payment required for each unit of eligibility nominated by an applicant; and
(c) the financial security amount for the auction.

2.2 Publication of notice by ACA

(1) Before holding an auction, the ACA must publish a notice in a newspaper circulating nationally in Australia:
(a) describing the parts of the spectrum to be auctioned; and
(b) giving a brief description of the way the auction will be conducted; and
(c) inviting people to apply to the ACA to take part in the auction; and
(d) stating the closing date and time for applications; and
(e) stating that licences will be auctioned in accordance with this determination; and
(f) stating that further information (the Applicant Information Package) can be obtained from the ACA at the address given in the notice.

(2) If a matter mentioned in the notice changes, the ACA must publish another notice giving details of the change in a newspaper circulating nationally in Australia.

(3) The ACA may publish other information about auctions and may publish that information, and the notices mentioned in subsections (1) and (2), in other ways.
2.3 Applicant Information Package

(1) The Applicant Information Package must contain the following information and documents:

(a) if a part of the spectrum to be auctioned was the subject of a notice by the Minister under section 36 of the Act designating a part that has not previously been allocated — the notice;

(b) if a part of the spectrum to be auctioned was the subject of a spectrum re-allocation declaration by the Minister under section 153B of the Act — the declaration;

(c) a guide to the auction process;

(d) the Marketing Plan;

(e) this determination;

(f) the application form, with instructions for completing and lodging the form;

(g) the Deed of Financial Security;

(h) information about the performance payment as an alternative to providing a Deed of Financial Security, if required;

(i) the Deed of Acknowledgment;

(j) the amount of the entry fee for the auction set by the ACA under paragraph 2.1 (a);

(k) the amount of the eligibility payment required for each unit of eligibility nominated by the applicant set by the ACA under paragraph 2.1 (b);

(l) the financial security amount set by the ACA under paragraph 2.1(c);

(m) the closing date and time for applications;

(n) the address of the auction centre;

(o) the fax numbers of the auction centre and the Receiver of Public Monies for payment of monies made by RTGS.

(2) The Applicant Information Package may also contain other information about the auction.
2.4 Applications

(1) A person who wants to obtain a spectrum licence under this determination must apply to the ACA for registration.

(2) The person must give the ACA the following documents (the application documents):
   (a) a completed application form; and
   (b) a completed Deed of Financial Security, if required under section 2.8, or notification in writing that the person has lodged a performance payment; and
   (c) a completed Deed of Acknowledgment.

(3) The application documents must have with them proof of payment of:
   (a) an eligibility payment, worked out in accordance with section 2.7;
   (b) the entry fee; and
   (c) if required, a Performance Payment.

(4) For subsection (3), a payment by RTGS is not effective unless the funds have been paid into the ACA’s bank account at the time the application documents are lodged.

(5) The eligibility payment and entry fee must be paid in accordance with section 1.9.

(6) Acceptance of a payment by RTGS does not constitute acceptance of the application documents.

2.5 Lodging of applications

(1) The application documents must be lodged with the ACA, at the auction centre, by the closing time on the advertised closing date.

(2) As soon as practicable after receiving the application documents, the ACA must confirm receipt by fax or by letter (if the ACA does not know the applicant’s fax number) noting particulars of the applicant’s:
   (a) name; and
   (b) address; and
Division 1  Application and registration

(c) ACN or ARBN; and
(d) initial eligibility.

(3) If the applicant wishes to change any of the details in subsection (2), the applicant must, within 5 working days of the date of receiving confirmation from the ACA, give the ACA written notice of the change accompanied, as required, by:
(a) if the applicant submitted a Deed of Financial Security, a further Deed of Financial Security; or
(b) if the applicant submitted a performance payment, an additional performance payment if this is required; and
(c) a further Deed of Acknowledgment; and
(d) a further eligibility payment, if this is required.

2.6 Initial eligibility

(1) When completing the application form, an applicant must nominate its initial eligibility.

(2) An applicant may nominate any eligibility the applicant wishes, as long as the amount does not exceed:
(a) the total of the lot ratings of all lots on offer; or
(b) if the Minister has issued the ACA a Direction under s.60(10) in respect of a band and Part 1A of this determination applies to a band—the limits imposed under that Part.

(3) The ACA must ensure that the application form provides a guide to calculating initial eligibility.

(4) The applicant’s initial eligibility cannot be increased during the auction process.

Note 1 An applicant cannot bid so as to exceed its eligibility: see section 4.17 — but nothing prevents an applicant from obtaining eligibility to cover all lots up to the limits in subsection 2.6 (2), as long as the applicant pays the appropriate eligibility payment.

Note 2 Subject to the limits set by section 4.17, an applicant may bid on any combination of lots. In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated on the application form.
2.7 Eligibility payment

The amount of eligibility payment payable by an applicant is the amount in dollars worked out by multiplying the amount of the applicant’s initial eligibility by the amount set by the ACA under paragraph 2.1 (b).

2.8 Deed of Financial Security or performance payment

(1) A person who wishes to be registered as an applicant must give the ACA a Deed of Financial Security or performance payment unless:

(a) the applicant satisfies the ACA that it is an authority of the Commonwealth, a State or a Territory; or

(b) the applicant satisfies the ACA that it is a subsidiary, within the meaning of the Corporations Law, of an authority of the Commonwealth, a State or a Territory; or

(c) the ACA decides, under subsection (2), that the applicant need not give the ACA a Deed of Financial Security or performance payment.

(2) If a company (other than a company which is incorporated outside of Australia) satisfies the ACA that it does not carry on business for profit, the ACA:

(a) may decide that the company need not give the ACA a Deed of Financial Security or a performance payment; and

(b) must notify the company in writing of the decision as soon as practicable after making the decision.

(3) Each person giving a Deed of Financial Security is bound by force of this determination to indemnify the ACA according to the terms of the Deed.

(4) The amount secured under the Deed of Financial Security or the performance payment must be at least an amount in dollars calculated as the initial eligibility nominated by the applicant multiplied by the financial security amount set by the ACA under paragraph 2.1(c).

(5) A person giving a Deed of Financial Security must be:

(a) a bank licensed to operate in Australia; or
(b) a person authorised to carry on business in Australia as an insurer under the Insurance Act 1973; or
(c) if Part VII of that Act has not ceased to have effect — a Lloyd’s underwriter.

(6) For this section, a corporation makes a Deed of Financial Security by executing the Deed in accordance with section 127 of the Corporations Law.

2.9 Lodging of power of attorney

If a Deed of Financial Security is made under a power of attorney for a corporation, the applicant must ensure that a copy of the power of attorney is lodged with the Deed.

2.10 Failure to comply with requirements concerning Deed of Financial Security

(1) This section applies if the ACA is not satisfied that the person giving the Deed is a person who complies with subsection 2.8 (5).

(2) The applicant’s registration is of no effect.

(3) The applicant is excluded from taking part (or any further part) in the auction and from obtaining a spectrum licence.

(4) The applicant’s eligibility payment is refundable.

(5) The applicant’s entry fee is not refundable.

2.11 Performance payment

(1) This section applies if an applicant gives the ACA a performance payment instead of a Deed of Financial Security.

(2) Performance payment monies lodged with the ACA may be dealt with in accordance with this determination as security for the timely discharge of the applicant’s financial obligations to the ACA under this determination.
(3) If an applicant defaults in making payment for a successful bid, the performance payment is forfeited to the ACA to discharge the liability of the applicant in accordance with section 5.4.

(4) The ACA must account to the applicant for the application of monies referred to in subsection (2) after completion of the auction as set out in Part 5.

### 2.12 Forfeiture and refund of secured monies

(1) To meet any undischarged liability owed by an applicant to the ACA for the matters mentioned in subsection (2), monies will be forfeited to the ACA that:
   
   (a) are secured by the performance payment; or
   
   (b) are secured by, and paid to the ACA, under the Deed of Financial Security; or
   
   (c) have been paid by the promisor to the ACA under section 1.4 of the Deed of Financial Security.

(2) For subsection (1), the matters include:
   
   (a) any act or omission by the applicant, its officers, employees, agents, volunteers, subcontractors or associates in connection with the applicant’s participation in an allocation process conducted under this determination; or
   
   (b) any breach or default by the applicant of its obligations or warranties under the Deed of Acknowledgment, this determination, or both.

### 2.13 Register of applicants

(1) The ACA must maintain a register of applicants.

(2) The register may be in electronic form.

(3) For each applicant, the register must contain details of:
   
   (a) the name and address of the applicant; and
   
   (b) the applicant’s telephone and fax numbers; and
   
   (c) the applicant’s eligibility; and
   
   (d) the applicant’s bidder identification number; and
   
   (e) if the applicant is a company or a registrable body — the applicant’s ACN or ARBN.
(4) The register may also contain any other information that the ACA considers necessary for the running of the auction.

(5) The ACA must make the changes to the register that the ACA considers necessary or convenient as soon as practicable after:
   (a) an applicant tells the ACA of any change of name, address, or telephone or fax numbers; or
   (b) the ACA becomes aware that any information on the register is not correct.

(6) Except as authorised by this determination, or as otherwise authorised by law, the ACA must ensure that any details about applicants are not disclosed until the auction is closed.

2.14 Registration of applicants

(1) The ACA must register an applicant only if:
   (a) the applicant has:
      (i) lodged completed application documents; and
      (ii) paid the entry fee and eligibility payment in accordance with section 1.9; and
   (b) if a Deed of Financial Security is required — the ACA is satisfied that the person who made the Deed is a person who complies with subsection 2.8 (5); and
   (c) if a performance payment is given instead of a Deed of Financial Security — the ACA is satisfied that the payment meets the ACA’s requirements for this determination.

(2) The ACA must assign to each registered applicant:
   (a) a bidder identification number (BIN); and
   (b) a password and encryption code keys linked to that BIN to use with the auction computer system; and
   (c) a set of transaction code keys to be used if the applicant needs to bid by telephone in an emergency.

(3) At least 5 working days before the start of the auction, the ACA must, by writing, tell each registered applicant:
   (a) that the applicant has been registered; and
(b) the applicant’s initial eligibility, as shown on the register; and
(c) the starting date and time of the first round of the auction; and
(d) the ACA’s telephone and fax numbers available for use by registered applicants; and
(e) the applicant’s bidder identification number, password and transaction code keys.

(4) At least 5 working days before the start of the auction, the ACA must give each registered applicant the relevant encryption code keys.

2.15 Publication of bidder identification numbers

(1) After the closing date but at least 5 working days before the start of the auction, the ACA must publish a notice in a newspaper circulating in Australia setting out:

(a) if the registered applicant is a company, for each company:
   (i) its name; and
   (ii) its registered address; and
   (iii) its ACN or ARBN; and
(b) if the registered applicant is an individual, the name of the person who has consented to the publication of his or her name; and
(c) the initial eligibility of all registered applicants; and
(d) the bidder identification numbers of all registered applicants.

(2) After the notice has been published, the ACA may give out the information in the notice in other ways.

2.16 Preparation for bidding

(1) A registered applicant who bids must use software made available by the ACA.

   Note See section 4.8 for ways of taking part in the auction.

(2) The ACA will give each applicant:
(a) assistance in installing the software for the auction computer system; and
(b) training in using the software.

(3) However, subsection (2) does not apply to an applicant who proposes to bid from outside Australia.

*Note* The ACA will make an auction guide available to each registered applicant to help the applicant take part in the auction: see paragraph 2.3 (1) (c).
Division 2 Things the auction manager must do before the auction

2.17 Starting bids and increments

(1) After the closing date, the ACA must set the following 3 amounts:

(a) the starting price per lot rating;
(b) the increment of price per lot rating;
(c) the increment of percentage of high bid.

(2) The starting bid for each lot is the amount worked out by multiplying the starting price per lot rating by the lot rating for the lot.

Note The auction manager may vary the amounts fixed under subsection 2.17 (1): see section 4.13.

2.18 Stages of auction, eligibility percentage, waivers and first round

After the closing date, the auction manager must:

(a) fix the number of stages for the auction; and
(b) fix a percentage of eligibility as the percentage to be applied in calculating the activity target during each stage of the auction; and
(c) fix the number of waivers for each registered applicant, being the same number for all applicants; and
(d) set the amount of time allocated for the bidding period for each round of the auction; and
(e) set the amount of time allocated for the results period of each round of the auction; and
(f) set the schedule for the first and second rounds, based on the amounts referred to in paragraphs (d) and (e), taking into account the effect of section 4.4; and
(g) tell all registered applicants of these matters.
Part 3  Allocation for a pre-determined price

3.1 Allocation for a pre-determined price without an auction

(1) If, for each area available for allocation as described in the Marketing Plan, the total amount of bandwidth nominated for the area by all applicants for the area is equal to or less than the bandwidth available for that area, the ACA will offer to allocate licences for the area for a pre-determined price, as set out in this Part.

(2) The offer of a licence will be conditional on payment of the pre-determined price.

3.2 The pre-determined price

(1) The pre-determined price for a licence is worked out as follows:
   (a) the ACA will identify each lot to be included in the licence;
   (b) the ACA will work out the starting bid for each lot;
   (c) the ACA will add up the starting bids for each lot.

   Note  The starting bid is worked out in accordance with subsection 2.17 (2).

(2) The balance of the pre-determined price payable by an applicant is the pre-determined price less the amount of the eligibility payment paid by the applicant.

3.3 Offer of licence

(1) The ACA will offer each applicant a licence or licences for a bandwidth in the area nominated by the applicant.

(2) The ACA will send each applicant, by receipted mail:
   (a)  a draft of the licence or licences; and
(b) a notice stating:
   (i) that the applicant is offered a licence or licences for a bandwidth in the area nominated by the applicant; and
   (ii) the amount of the pre-determined price payable for each licence and the total pre-determined price; and
   (iii) the amount of the eligibility payment made by the applicant and held by the ACA; and
   (iv) the balance of the pre-determined price payable for the licence or licences; and
   (v) that the offer is conditional on each other applicant accepting the licence or licences offered or telling the ACA that it withdraws its application for a licence.

(3) The licence or licences offered will cover the lots that include the bandwidth nominated by the applicant.

(4) An applicant who wishes to accept the ACA’s offer must do so by notifying the ACA in writing within 10 days of receiving the offer, agreeing to pay the balance of the pre-determined price.

(5) If an applicant withdraws, the ACA may proceed to allocate licences to the other applicants in accordance with subsection (6).

(6) If every applicant accepts the licence offered to the applicant, each applicant is entitled to be allocated the licence offered on payment of the balance of the pre-determined price in accordance with this determination.

(7) The ACA must write to each applicant about each applicant’s entitlement under subsection (6).

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

3.4 Payment of balance of pre-determined price

The balance of the pre-determined price is payable:

(a) at the auction centre within 10 working days of the date of the letter sent to the applicant under subsection 3.3 (7); and
(b) in accordance with section 1.9.

3.5 Withdrawal of offers

If an applicant refuses to accept the licence or licences offered, and does not withdraw its application:
(a) the offer of all other licences is taken to be withdrawn; and
(b) all lots will be allocated by auction, in accordance with this determination.

3.6 Default

If an applicant does not pay the balance of the pre-determined price for a licence or licences in accordance with section 3.4:
(a) the applicant ceases to be entitled to be allocated the licence or licences; and
(b) the eligibility payment paid by the applicant is forfeited to the ACA; and
(c) the allocation of licences under this Part to other applicants is not affected; and
(d) the lots included in the licence or licences are to be treated as unsold lots under section 6.1.
Part 4  The auction

Division 1  Auction arrangements

4.1  Auction procedure

(1) An auction consists of a number of stages, made up of a number of rounds.

(2) The first round of the auction starts on the date and time for that round set by the auction manager under paragraph 2.18 (f).

4.2  Rounds of an auction

(1) Each round of an auction is made up of the following periods and activities:

(a) the bidding period — during which registered applicants make their bidding instructions;

(b) the results period — during which the auction manager works out the high bids on each lot offered, using the auction computer system and then publishes, using the auction computer system and the internet, the results for the round.

Note  For paragraph (a), the following provisions are relevant:

(a) in the case of electronic bidding — a bid is taken to have been made when the bidding instruction file containing the bid has been authenticated by the ACA’s auction computer system in accordance with paragraph 4.9 (1) (f);

(b) in the case of emergency telephone bidding — a bid is taken to have been made when the bidding instruction file containing the bid has been authenticated by the ACA’s auction computer system in accordance with paragraph 4.10 (1) (f);

(c) in the case of withdrawing bids — withdrawal may be subject to penalties, as set out in section 4.23.
(2) In this section:

- **results**, for a round, means the following results and information:
  
  a) all bids rounded down to 4 significant digits and bid withdrawals made during the round;

  b) the amount of the high bid on each lot at the end of the round, rounded down to 4 significant digits, and the bidder identification number of each high bidder;

  c) the minimum bid on each lot for the next round;

  d) the total value of high bids held by an applicant at the end of the round;

  e) each registered applicant’s eligibility at the beginning of the next round;

  f) the schedule for the next round and the round after that, worked out from the times set by the auction manager under paragraphs 2.18 (d) and (e), having regard to the matters set out in section 4.4;

  g) any other information necessary for the smooth running of the auction.

(3) The information about a bid published under this section must not identify the automatic re-bid limit of any applicant unless that re-bid limit becomes a bid for the round.

### 4.3 Schedule for a round

The schedule for a round must include:

 a) the date and time at which the round is to start and bidding opens; and

 b) the date and time when the bidding period ends and the results period starts; and

 c) the date and time when the results period ends and the round ends.

### 4.4 Rounds on a day

(1) Once the auction opens, there will be at least 1 round each working day unless the day is a recess day.
(2) No round on a day will start before 9.00 am.

(3) If, after the end of a round, the auction manager thinks that there will be time to finish another round before 5.30 pm on that day, he or she may decide to hold another round for that day.

4.5 Recess days

(1) The auction manager may declare a day to be a recess day.

(2) Before declaring a recess day, the auction manager must give registered applicants 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 all registered applicants of this.

4.6 Auction manager may vary the length of the bidding or results period

(1) The auction manager may vary the length of the bidding period or the results period of a round in the auction.

(2) Before varying the length of time set for the bidding period or the results period of a round in the auction, the auction manager must give registered applicants an opportunity to comment on the proposed variation and take into account any comments received.

(3) If the auction manager decides to vary the length of time set for the bidding period or the results period of a round in the auction, the auction manager must tell all registered applicants of this and specify the round when the change will take effect.

4.7 Movement to next stage of auction

(1) The auction manager may move the auction to the next stage.

(2) Before moving the auction to the next stage, the auction manager must give registered applicants an opportunity to
comment on a proposal to do this, and take into account any comments received.

(3) If the auction manager decides to move to the next stage he or she must tell all registered applicants of this and specify the round when the change will take effect.
Division 2  Bidding and taking part in the auction

4.8 Ways of taking part in the auction

(1) The way for a registered applicant to take part in an auction is by electronic means.

(2) A registered applicant taking part in an auction must use only the software made available by the ACA.

(3) However, a registered applicant may take part by telephone if, because of what the ACA considers to be an emergency, the registered applicant is unable to take part electronically.

(4) In this Division:

   taking part means bidding, making automatic re-bids, withdrawing a bid, exercising a waiver or giving instructions not to exercise a waiver.

     Note  For general rules about bidding, see section 4.16; for rules on using a waiver of the activity rules, see section 4.20; and for withdrawing a bid, see section 4.21.

4.9 Electronic bidding procedure

(1) The procedure for taking part in the auction electronically is as follows:

   (a) a registered applicant must use the bidding software available from the ACA to prepare its bidding instruction file for the round;

   (b) the bidding instruction file will be encrypted for transmission and digitally signed using keys provided by the ACA to authenticate the file as having been created by the registered applicant;

   (c) the bidding software will permit the registered applicant to print out a report of the bidding instructions contained in the bidding instruction file before transmission;

   (d) the registered applicant must use the software to connect to the ACA’s auction computer system;
(e) the registered applicant must initiate a file transfer of the bidding instruction file to the ACA’s auction computer system;

(f) once the bidding instruction file is authenticated, the ACA’s auction centre computer will generate a receipt file which will be returned to the registered applicant during the connection;

(g) the ACA’s auction computer system will process the bidding instructions contained in the bidding instruction file.

(2) Details of procedures for bid transmission and authentication are set out in Schedule 1.

4.10 Emergency telephone bidding procedure

(1) The procedure for emergency telephone bidding is as follows:

(a) a registered applicant must use the telephone number notified by the auction manager as the number for telephone bidding;

(b) the registered applicant’s call will be taken by an ACA operator;

(c) the registered applicant must quote the bidder identification number and transaction code key, as described in Schedule 1, assigned to the applicant by the ACA;

(d) the registered applicant must meet any additional identification requirements imposed by the ACA, as set out in Schedule 1;

(e) the ACA must enter the bidding instructions, as directed by the registered applicant, into the auction computer system as soon as practicable;

(f) the time that bidding instructions contained in a bidding instruction file are made is taken to be the time that the file was authenticated by the ACA’s auction computer system;

(g) the ACA must print out a confirmation of the bidding instructions from the auction computer system;

(h) the ACA must send this to the registered applicant by fax, if the applicant has nominated a fax number;
(i) the ACA must process the bidding instructions in the same way as it processes the bids made electronically by registered applicants.

(2) Details of the procedures for bid transmission and authentication are set out in Schedule 1.

### 4.11 Identification of registered applicants

(1) A registered applicant must use its bidder identification number when bidding, and must comply with the other identification requirements set out in Schedule 1.

(2) If the auction manager tells registered applicants to use additional identification, they must do so.

### 4.12 Starting and minimum bids

(1) A bid on a lot below the starting bid for that lot will not be accepted.

*Note* For starting bids, see section 2.17.

(2) After a starting bid has been made on a lot in a round, a bid on the lot below the minimum bid for that lot in a later round will not be accepted.

(3) The minimum bid for a lot is the sum of the high bid on that lot in the previous round, as published in the results and information for the round, and the higher of:
   
   (a) the increment of price per lot rating set under section 2.17, multiplied by the lot rating for the lot; and
   
   (b) the increment of percentage of high bid set under section 2.17, multiplied by that high bid.

(4) However, if a bid on a lot is withdrawn, the minimum bid on that lot is worked out in accordance with section 4.21.

(5) A registered applicant who holds the high bid on a lot from a previous round is not required by subsection (2) to raise its own high bid, but may do so.
Division 2  Bidding and taking part in the auction

4.13 Changing starting and minimum bids

(1) Despite section 4.12, at any time during the auction the auction manager may change the amounts fixed under subsection 2.17 (1):
   (a) to vary the amount of the starting bid on a lot; or
   (b) to vary the minimum bid on a lot.

(2) Before doing this, the auction manager must:
   (a) tell registered applicants of the proposed change; and
   (b) give registered applicants the opportunity to comment on the proposal.

(3) When changing the amounts, the auction manager must have regard to registered applicants’ comments so far as the comments are relevant to the issue.

(4) The auction manager must notify all registered applicants of the change before the round when the change takes effect.

4.14 Automatic re-bidding

(1) A registered applicant may not make an automatic re-bid on a lot in a round unless the applicant:
   (a) makes a bid on the lot in the round; or
   (b) is the high bidder on the lot from the previous round.

(2) An automatic re-bid:
   (a) only applies in the round in which it is made; and
   (b) must be:
      (i) if the registered applicant makes the starting bid on a lot — at least 1 minimum bid increment above the starting bid; or
      (ii) if the registered applicant makes a bid on a lot other than the starting bid — at least 1 minimum bid increment more than the applicant’s own bid; or
      (iii) if the registered applicant is already the high bidder on that lot — at least 2 minimum bid increments above the applicant’s high bid as published in the results and information for the previous round.
(3) In working out the high bid in a round, an automatic re-bid made by the bidder who made the next highest bid to the automatic re-bid is disregarded.

(4) If only 1 bidder makes an automatic re-bid that exceeds the high bid made or held on the lot in the round by another bidder:
   (a) the bidder is taken to be the high bidder for the lot in the round; and
   (b) the amount of the high bid for the round is taken to be the lesser of:
       (i) 1 minimum bid increment more than the highest bid recorded for the lot in the round; or
       (ii) the amount of the automatic re-bid.

(5) If more than 1 bidder makes an automatic re-bid that exceeds the high bid made on the lot in the round by another bidder:
   (a) the bidder who nominated the highest amount to which the automatic re-bid was limited is taken to be the high bidder for the lot; and
   (b) the amount of the high bid for the round is taken to be the lesser of:
       (i) 1 minimum bid increment more than the next highest amount to which an automatic re-bid was limited for the lot in that round; or
       (ii) the highest amount to which an automatic re-bid was limited for the lot in that round; and
   (c) the amount of the next highest bid is taken to be the next highest amount to which an automatic re-bid was limited for the lot in that round; and
   (d) any bid instruction, including an automatic re-bid, is to be regarded as a bid for the lot at the amount of the automatic re-bid.

(6) If more than 1 bidder makes an automatic re-bid that exceeds the high bid made on the lot in the round by another bidder by the same amount, and that automatic re-bid amount exceeds any other automatic re-bid made on the lot in the round:
   (a) the bidder whose re-bid is recorded in the computer system as being first made is taken to be the high bidder for the lot in that round; and
Division 2  Bidding and taking part in the auction

(b) the amount of the high bid for the round is taken to be the amount to which an automatic re-bid was limited for the lot in that round; and

(c) any bid instruction, including an automatic re-bid, is to be regarded as a bid for the lot at the amount of the automatic re-bid.

(7) In this section:

 minimum bid increment for a lot in a round means the higher of:

(a) the increment of price per lot rating set under section 2.17, multiplied by the lot rating for the lot; and

(b) the increment of percentage of high bid set under section 2.17 multiplied by:

(i) the high bid on that lot in the previous round as published in the results and information for that round; or

(ii) if there is no high bid published in the results and information for that round — zero.

Note The ACA must not disclose automatic re-bid limits: see subsection 4.2 (3).

4.15 All lots on offer simultaneously

All of the lots on offer at an auction will be open for bidding in each round of the auction.

4.16 General rules about bidding

(1) Subject to Part 1A and sections 4.17 and 4.18, a registered applicant may bid on any combination of lots.

(2) In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated in the application form.

(3) In a round, an applicant may lodge only 1 file containing the applicant’s bidding instructions.

Note An automatic re-bid may be made once only in a round: see section 4.14.
(4) If 2 or more registered applicants make identical bids on the same lot and the bids are the high bids for the round, the bid that is recorded in the auction computer system as being made first in time will be taken to be the high bid on that lot for the round.

(5) If a bid is disputed:
   (a) the auction manager is the sole arbiter; and
   (b) the auction manager’s decision is final.

(6) If a person who is not a registered applicant makes a bid for a lot:
   (a) the bid is to be ignored; and
   (b) the bid does not, by itself, affect further bidding on that lot or the validity of the licence that includes that lot.

Note For the emergency telephone bidding procedure, see section 4.10.

4.17 Eligibility bidding cap

(1) A registered applicant is not entitled to bid in such a way that the total of the lot ratings of the lots on which the applicant is active in any 1 round exceeds the applicant’s eligibility at the time of the bid.

Note: A bidder who bids in such a way that it exceeds the allocation limits for the auction will be excluded from the auction – see section 1A.2A(2).

(2) To ensure that an applicant’s eligibility is not exceeded, the ACA will process the applicant’s bids as follows:
   (a) bidding instructions will be processed in order of lot number, starting with the lowest number;
   (b) bidding instructions will only be processed so that the total of the lot ratings for those bids does not exceed the applicant’s eligibility;
   (c) if the lot rating for a bid to be processed would result in the progressive total of lot ratings exceeding the applicant’s eligibility — the ACA will not process that bid or any further bids of the applicant and will treat the bid and those further bids as if they had not been made.

Note As to when an applicant is active, see subsection 1.4 (4).
4.18 **Bidding activity targets**

Subject to the waiver provisions in section 4.20, a registered applicant must bid in such a way during a round that the total of the lot ratings on the lots on which the applicant is active in that round is equal to or greater than the applicant’s activity target for the round.

*Note 1* For activity target, see subsection 1.4 (1).

*Note 2* A registered applicant who does not bid in the way mentioned in this section is liable to lose eligibility, in accordance with section 4.19.

4.19 **Loss of eligibility**

(1) A registered applicant’s eligibility for the next round will be reduced to an amount worked out in accordance with subsection (2), if:

(a) the registered applicant does not meet its activity target; and

(b) the registered applicant does not exercise a waiver in that round.

(2) The amount of a registered applicant’s eligibility under subsection 1 for the next round is to be worked out as follows:

\[
E = \frac{R}{P}
\]

where:

E is the registered applicant’s eligibility for the next round; and

R is the sum of the lot ratings of the lots on which the registered applicant was active in the current round; and

P is the percentage of eligibility (fixed by the auction manager under section 2.18) that applied in the round.

*Example*

A registered applicant’s eligibility at the start of a round is 20,000 units. The activity requirement for the round is 60%, (ie 12,000 units). In the round, the registered applicant’s activity is only 10,000 units and the applicant has not exercised a waiver, so eligibility will be reduced as a penalty for under-activity.

The registered applicant’s new eligibility will be current activity (10,000) multiplied by the inverse of the current activity requirement (1/0.6). This
equals 10,000 multiplied by 1.6667, which is 16,667 units. There is nothing the registered applicant can do once the auction is under way to recover eligibility.

(3) A registered applicant who loses eligibility in a round is only entitled to bid in future rounds in such a way that the total lot ratings of the lots on which the applicant is active does not exceed its eligibility as reduced in accordance with this section.

4.20 Waiver

(1) During the bidding period of a round, a registered applicant who would otherwise not meet its activity target may exercise a waiver of the effect of section 4.19.

(2) A registered applicant may continue to exercise waivers until the applicant has used all its waivers fixed by the auction manager under section 2.18.

(3) A registered applicant who exercises a waiver does not lose eligibility in that round.

(4) If an auction manager exercises a waiver on an applicant’s behalf, the applicant’s eligibility for that round is not lost.

(5) The auction manager will exercise a waiver on a registered applicant’s behalf unless the registered applicant tells the auction manager, during the bidding process, that the waiver is not to be exercised, if:

(a) a registered applicant bids in such a way that, but for this section, the applicant would not meet its activity target; and

(b) all the waivers fixed by the auction manager for the registered applicant have not been exercised.

(6) A round will not be regarded as the final round if:

(a) there are no bids in a round (and, as a result, the round would be regarded as the final round); and

(b) a registered applicant exercises a waiver in that round.

Note For exercising a waiver, see section 4.8.
4.21 Withdrawal of bids

(1) During a round, a registered applicant may withdraw its bid on a lot from a previous round only if the bid is the high bid on the lot in that round.

(2) If a registered applicant withdraws a bid in a round in accordance with subsection (1) and no other applicant has made a bid on that lot in the round:
   (a) the ACA is taken to be the high bidder in that round for the lot, at the next highest bid (whether the next highest bid was published in the results as a high bid or not); and
   (b) the ACA will be identified by the bidder identification number 9999; and
   (c) the minimum bid for the lot in the next round is equal to that next highest bid made on the lot in a previous round, or if there is no other bid, the starting bid for the lot; and
   (d) the registered applicant may bid again on that lot in a later round; and
   (e) the registered applicant withdrawing the bid may lose eligibility, as set out in section 4.22.

4.22 Loss of eligibility on withdrawal

If a registered applicant withdraws a bid in a round, the applicant will not be regarded as being active on that lot and may lose eligibility.

4.23 Withdrawal penalty

(1) A registered applicant is liable for the withdrawal penalty in subsection (2) if:
   (a) the registered applicant withdraws a bid from a previous round on a particular lot; and
   (b) the successful bid price on the lot at the close of the auction is less than or equal to the withdrawn bid.

   Note A bid cannot be withdrawn unless it is the high bid for the lot: see section 4.21.

(2) For subsection (1), the withdrawal penalty is an amount that is the greater of:
(a) the difference between the withdrawn bid and the successful bid price; and
(b) 10 % of the withdrawn bid.

(3) A registered applicant is liable for the withdrawal penalty in subsection (4) if the applicant withdraws a bid on a particular lot and the lot is not sold at the auction.

(4) For subsection (3), the withdrawal penalty is an amount that is the greater of:
(a) the difference between:
   (i) the withdrawn bid; and
   (ii) the highest bid for the lot by another bidder which is less than or equal to the withdrawn bid and has not been withdrawn or, if there is no such bid, zero; and
(b) 10 % of the withdrawn bid.

(5) For subsection (4), if the applicant who withdrew the bid is the only applicant to have bid on the lot in the auction, the withdrawal penalty is worked out as if the second-highest bid were zero.

(6) A registered applicant may withdraw a bid on a particular lot more than once, but the applicant is liable to a withdrawal penalty each time.

(7) The amount of all withdrawal penalties imposed on an unsuccessful applicant will be deducted from the applicant’s eligibility payment and additional eligibility payment (if any) before any remaining portion is refunded.

(8) If the amount of all withdrawal penalties exceeds the eligibility payment and additional eligibility payment (if any), the balance will be taken out of the performance payment or monies paid under the Deed of Financial Security, with any amount still owing being a debt due to the ACA that may be recovered in a court of competent jurisdiction.

Note If a withdrawal penalty is incurred by a successful applicant, the amount of the penalty will be added to the balance of the bid price payable by the applicant under section 5.2.
4.24 **Suspension of an applicant**

(1) If the ACA considers that a registered applicant’s transaction code keys have been compromised and cannot be used to authenticate bidding instructions, the auction manager may suspend the applicant’s participation in the auction.

(2) For subsection (1), the auction manager must tell the applicant:
   - the reason for the suspension;
   - the period of suspension (if any).

4.25 **Payment of additional eligibility payment**

(1) If, after the start of the auction, the amount of eligibility payment paid by a registered applicant falls below 10% of the total of high bids of the registered applicant recorded in the results of a round, the ACA must tell the applicant by written notice to pay an additional eligibility payment in accordance with subsections (3) and (4).

(2) The ACA must give the notice by fax to a fax number nominated by the registered applicant on its application form.

(3) The amount of additional eligibility payment payable under subsection (1) is equal to the amount of eligibility payment already paid by the applicant.

*Note:* The amount of eligibility payment is worked out in accordance with section 2.7.

(4) The additional eligibility payment must be paid by the registered applicant to the ACA by 5.00 pm on the third working day after the date of the notice, and in accordance with section 1.9.

(5) A registered applicant who fails to pay the additional eligibility payment in accordance with subsection (4), is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.

(6) If, at any time during the auction, the amount of eligibility payment and additional eligibility payment paid by a registered applicant falls below 10% of the total of high bids of the registered applicant, the ACA must again tell the applicant by
written notice given in accordance with subsection (2) to pay, in accordance with subsection (4), a further additional eligibility payment equal to the amount of eligibility payment and additional eligibility payment already paid by the registered applicant.

Note: the effect of this paragraph is that the amount of eligibility payment will double each time that the ACA issues a notice requiring payment of additional eligibility payment.

(7) A registered applicant who fails to pay the further additional eligibility payment in accordance with subsection (6), is excluded from taking any further part in the auction and therefore from obtaining a spectrum licence in the allocation process.

4.26 Consequences of exclusion

(1) The entry fee of an applicant who is excluded from obtaining a spectrum licence because the applicant fails to pay an additional eligibility payment (an excluded applicant) is not refundable.

(2) The eligibility payment and additional eligibility payment (if any) of an excluded applicant is refundable.

(3) However, before refunding the eligibility payment and additional eligibility payment (if any) of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.

(4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the excluded applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment cannot be refunded until then.
Division 3 Bringing the auction to an end

4.27 Suspension or cancellation of auction

(1) The ACA or the auction manager may suspend or cancel an auction, or a round of an auction, at any time:
   (a) if the Minister directs the ACA or the auction manager to do so; or
   (b) because of:
       (i) an error in, or technical failure of, the auction computer system; or
       (ii) technical failure of the telecommunications system being used for the auction; or
       (iii) an event beyond the control of the ACA; or
   (c) if the ACA is satisfied that there has been, or is likely to be, a breach of the auction procedures of a kind that could compromise the auction; or
   (d) if the auction manager is satisfied that in the circumstances it is appropriate to do so.

(2) If the auction is suspended, the ACA or the auction manager may:
   (a) resume the auction from the end of any round which has been completed, and for which the auction manager is satisfied that the results are correct; or
   (b) cancel the auction.

Note: the auction manager may give the first round after resumption a higher round number if it is administratively expedient to do so.

(3) If the auction is cancelled:
   (a) all eligibility payments and additional eligibility payments (if any) paid by registered applicants will be refunded; and
   (b) the entry fee will not be refunded; and
   (c) the ACA may allocate the lots:
       (i) by another auction; or
       (ii) by tender; or
(iii) by allocation for a pre-determined price or a negotiated price.

*Note* The ACA may make a determination under section 60 of the Act about allocations other than by auction.

### Section 4.28

**Closing of auction**

(1) The rounds of the auction are to continue until:

(a) the auction is in its last stage; and  
(b) no bid is made on any lot on offer; and  
(c) no bidder exercises a waiver; and  
(d) no applicant remains under suspension.

(2) Once this happens, the auction is considered closed, and the auction manager must tell all registered applicants of this.

*Note* For suspension of an applicant, see section 4.24. For the exercise of waivers, see section 4.20.

(3) An automatic re-bid on a lot by a registered applicant when that applicant is the high bidder on the lot from the previous round does not constitute a bid for paragraph (1) (b).

(4) If bidding is continuing after 20 rounds, the auction manager may consider it necessary, to achieve a result, to close the auction at the end of a round he or she specifies (the specified closing round).

(5) Before declaring the specified closing round, the auction manager must:

(a) at least 2 rounds before the proposed closing time, tell all registered applicants that he or she proposes to close the auction at the end of the specified closing round, and ask for their comments within the time (being not less than 1 hour) set by the auction manager; and  
(b) take registered applicants’ comments into account in deciding whether to close the auction (so far as the comments are relevant to the issue); and
(c) if the auction manager decides to close the auction:
   (i) tell all registered applicants of the specified closing round; and
   (ii) at the end of the specified closing round, tell all registered applicants that the auction is closed.

(6) If the auction is closed under subsection (5), the registered applicant who is the highest bidder on a lot at the close of the auction is taken to have made the highest final bid on the lot and to be the successful applicant for that lot.
Part 5 After the auction

5.1 Allocation of licence to highest bidder
The registered applicant who holds the highest bid on a lot when the auction closes (the *successful applicant*) is entitled to be allocated a licence that includes that lot if the applicant pays the balance of the bid price, worked out under section 5.2, for all lots for which the applicant was the successful bidder, in accordance with section 5.3.

5.2 Calculation of balance of bid price
(1) The balance of the bid price to be paid by a successful applicant is worked out as follows:
   (a) the ACA will add up the highest bids made by the successful applicant;
   (b) the ACA will add up the value of the bid withdrawal penalties imposed on the applicant under section 4.23;
   (c) the ACA will add the total of the highest final bids and the total of the bid withdrawal penalties;
   (d) the ACA will deduct the applicant’s eligibility payment and additional eligibility payments (if any) from this total.

(2) The amount remaining is the balance of the bid price.

(3) If the applicant’s eligibility payment is greater than the total of the highest bids and bid withdrawal penalties:
   (a) the ACA will refund the difference; and
   (b) the applicant is entitled to be allocated a licence without further payment to the ACA.

5.3 Payment of balance of bid price
(1) The ACA will notify each successful applicant, by receipted mail, of the balance of the bid price.
(2) A successful applicant must pay the balance of the bid price to the ACA as follows:
   (a) 10% of the balance of the bid price no later than 10 working days after the date of the notice; and
   (b) the remainder no later than 20 working days after that 10th working day.

(3) If a notice under subsection (1) contains a material error, the ACA will give the successful applicant a revised notice by receipted mail.

(4) If the ACA gives a successful applicant a revised notice, the successful applicant must pay the balance of the bid price as follows:
   (a) if the revised notice is given before the successful applicant has made the 10% payment mentioned in paragraph (2) (a) — 10% of the balance of the bid price no later than 10 working days after the date of the revised notice and the remainder no later than 20 working days after that 10th working day; and
   (b) if the revised notice is given after the successful applicant has made that 10% payment — the remainder of the bid price, no later than 20 working days after the date of the notice.

(5) The payment of 10% of the balance of the bid price mentioned in paragraph 2 (a) or 4 (a), must be made in full by the specified time by RTGS in accordance with section 1.9.

(6) The payment of the remainder of the bid price mentioned in paragraph 2 (b) or 4 (b), must be made in full by the specified time by RTGS in accordance with section 1.9.

5.4 Default by successful applicant

(1) If a successful applicant does not pay any part of the balance of the bid price in accordance with section 5.3:
   (a) the applicant ceases to be entitled to be allocated a licence at the auction; and
Section 5.6

(b) all highest bids made by the applicant will be treated as withdrawn bids and the applicant will be penalised for those bids in accordance with section 4.23; and

(c) any lots so affected will be regarded as defaulted lots and the applicant will be taken to be in default of its financial obligations to the ACA under this determination.

(2) If the ACA holds a performance payment for a successful applicant who is in default, then so much of the monies held by the ACA as will meet the undischarged liability of the applicant are forfeited to the ACA.

(3) Any monies held by the ACA in excess of the undischarged liability of the successful applicant in default must be refunded to the applicant after that liability has been satisfied.

(4) However, if a successful applicant remains in default of its financial obligations to the ACA, the amount remaining payable to the ACA is a debt due to the ACA and is recoverable by the ACA from the successful applicant in any court of competent jurisdiction.

5.5 Allocation of defaulted lots

The ACA will treat the defaulted lots as unsold and offer them for allocation at another time under section 6.1.

5.6 Refunds to unsuccessful applicants

(1) If an unsuccessful applicant lodged a performance payment, the ACA must account to the applicant for the application of all monies paid to the ACA under this determination by the applicant.

(2) The ACA must account to an unsuccessful applicant:

(a) for the applicant’s eligibility payment and additional eligibility payment (if any) less the amount of any bid withdrawal penalties imposed under section 4.23; and

(b) for money (if any) held by the ACA as a performance payment, less:
(i) the balance of any withdrawal penalties not covered by the eligibility payment and additional eligibility payment (if any); and

(ii) any other monies owing by the applicant to the ACA in timely discharge of its financial obligations under this determination.
Part 6 Miscellaneous

6.1 Unsold lots
A lot offered at an auction but unsold may be allocated by the ACA, as the ACA determines:
(a) by another auction; or
(b) by tender; or
(c) by allocation for a pre-determined price or a negotiated price.

Note 1 Unsold lots include defaulted lots: see section 5.5.

Note 2 The ACA may make determinations under section 60 of the Act about allocations other than by auction.

6.2 Liability of ACA
The ACA is not 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 determination.

6.3 Recovery of damages by ACA
This determination is without prejudice to any right of action or remedy which the ACA has or may have against any person which arose or arises under the Deed of Acknowledgment, Deed of Financial Security, statute, common law, equity or otherwise.

6.4 Giving of information by ACA
Before the ACA allocates a licence, it may announce, or publish a notice of:
(a) the name of the person to whom the licence is to be allocated; and
(b) the highest final price bid for the lots included in the licence, or the pre-determined price for the licence, as appropriate.
6.5 **Information provided by applicant**

(1) An original document given to the ACA by a person for the purposes of the allocation system set out in this determination (including a document that contains intellectual property) becomes the property of the ACA.

*Note* Subsection (1) does not apply to a document that establishes an individual’s identity.

(2) The ACA may use information provided by an applicant for the purposes of the ACA.
Part 7 Revocation

7.1 Revocation

The Radiocommunications (Spectrum Licence Allocation) Determination 1999 dated 3 November 1999 is revoked.
Schedule 1 Procedures for bid transmission (including automatic re-bids and withdrawal of bids) and authentication

(sections 4.9, 4.10 and 4.11)

The aim of these procedures is to ensure that information purporting to represent the instructions of a registered applicant during bidding has actually come from that registered applicant.

1. Connection to the auction computer system

Each registered applicant will connect with the auction computer system through the ACA’s public network interface using a telephone number supplied to registered applicants by the auction manager, or by the internet.

To log on using a telephone connection, the applicant will need to supply a user ID and password.

Once connection is established, the registered applicant will be able to:

(a) download from the auction computer system a file containing auction results from the auction computer system; or
(b) upload to the auction computer system its bid file during a round.

A registered applicant may need to connect a number of times during a round:

(a) to make bidding instructions; or
(b) to obtain results after the bidding period.

The auction schedule will provide information to registered applicants about when to make these connections.
2. **Encryption of Files for Transmission**

The ACA will use ‘public key’ encryption to secure the privacy and integrity of each registered applicant’s bid file as it is transmitted to the ACA. Public key encryption also offers scope to provide sophisticated digital authentication procedures for files that are mathematically improbable to compromise.

*Note*  Public key encryption works on the basis of 2 complementary keys (very large numbers). The 2 keys are mathematically related, but in a way that cannot be easily deduced. One key must be kept private, while the other can be made public. A message encrypted with 1 part of the key pair can ONLY be decrypted with the other part.

Public key cryptography is implemented by users freely distributing their public key, so that other people can encrypt messages to them with that key. The message can then only be decrypted using the person’s private key which the person alone holds and which the person must protect.

For the auction, the ACA will provide all pairs of encryption keys. Each registered applicant will be given a copy of the ACA’s public key and a copy of the applicant’s own private key. The ACA will retain a copy of all public and private keys distributed in the auction.

The ACA will store encryption keys under appropriate security arrangements in the auction centre.

The ACA will specify 1024 bit keys.

3. **Bidding instruction files**

Each bidding instruction file will be prepared in the form of a database following the Microsoft Access 97 specification. Before transmission, the file will be digitally signed. The signature will then be encrypted with the registered applicant’s private encryption key.

*Note*  The digital signature will be calculated by a checksum algorithm that calculates a 128 bit number expressing the whole file. It is so sensitive that the change of a full-stop to a comma will result in a substantially different checksum.

The file itself will then be encrypted using the ACA’s public encryption key. The file and the attached signature will then be transmitted to the auction computer system.
On receipt of the file by the auction computer system, the ACA’s auction software will automatically decrypt the file that has been received using the ACA’s private encryption key. It will recalculate the digital signature of the file received, decrypt the digital signature attached to the file with the registered applicant’s public encryption key and compare the 2 signatures. An exact comparison between the received signature and the private encryption signature will indicate that it is highly unlikely that the file has been intercepted or corrupted during transmission.

Once a file has been received and authenticated, the ACA auction computer system will generate a receipt and transmit it to the registered applicant over the connection while it is held open.

A bidding instruction file bearing an authentic signature, prepared with one of the encryption keys provided by the ACA to a registered applicant, will be taken by the ACA as having originated from that registered applicant and from no other person.

Any bidding instruction file that is not in the format described above will not be accepted for processing under any circumstances.

*Note* In the Deed of Acknowledgment, each applicant will acknowledge that the mechanisms described above and implemented by the ACA are acceptable to authenticate a bid, and that they will be bound by any bid in a bid file that passes the authentication checks using the key provided to them, until they notify the ACA that their keys may have been compromised.

### 4. Key handling

When an applicant is registered to participate in an auction, the ACA will assign a 4 digit bidder identification number and a randomly generated 8 character password.

The ACA will generate an encryption key pair for the registered applicant, using a pass-phrase mathematically derived from the registered applicant’s password. The private part of the encryption key pair will be copied to a floppy disk and distributed to the registered applicant, together with the bidder identification number and password. These materials will be distributed by receipted mail or safe-hand courier to the address nominated by the applicant.
5. **One-time transaction code keys**

For each registered applicant, the ACA will prepare a list of ‘one-time’ transaction code keys for use by that registered applicant only in authenticating its telephone bids should this be required in an emergency.

Each list will contain a minimum of 100 transaction code keys. No two lists will be the same. No two codes will be the same, except as generated by chance.

Each key will consist of 8 randomly generated letters. The case of the letters will not be significant to their use.

Each key will be used once, in the order in which the keys are listed. The ACA will retain a copy of each list and identify that list as having been issued to the registered applicant.

6. **Using Transaction Code Keys**

Registered applicants bidding by telephone must identify themselves, to the ACA operator using the next available transaction code key when asked.

Once a transaction code key is used, the registered applicant will strike through that key on the list and note the round and the date and time that it was used.

When the ACA is contacted by a registered applicant wanting to make bidding instructions, the ACA will authenticate the instructions using the transaction code key by:

(a) looking up the list of keys for that registered applicant; and

(b) comparing the key provided by the registered applicant with the next available key on the list.

If the key matches, the instructions will be regarded as authentic.

Once a transaction code key is used by a registered applicant, the ACA will note the round and the time and date that the key was used.
Registered applicants may not re-use a transaction code key or use a key other than the next key in the sequence. Any other key will be regarded as invalid. Any communication containing an invalid key will be ignored. The ACA will advise the registered applicant by telephone that the communication has been ignored, and may suspend the registered applicant’s participation until new transaction code keys can be delivered.

7. Distributing Encryption and Transaction Code Keys

Encryption and transaction code keys will be distributed by receipted mail or safe-hand courier to the address nominated by the applicant.

If the registered applicant has any suspicion that the integrity of the keys have been compromised in transit, it must advise the ACA immediately so that new keys can be prepared. Depending on the nature of the tampering, replacement keys may be forwarded by receipted mail or by safe-hand courier to the address nominated by the applicant. They may also be held for collection at an ACA office, where they may be collected by the person nominated by the registered applicant as the contact person for the auction on presentation of the following evidence of identity (one of which must include the signature of the person presenting the identification):

(a) photographic evidence, being a driver’s licence or passport; or
(b) 2 forms of other identification (such as a birth certificate or credit card).

8. Storing Encryption and Transaction Code Keys

Registered applicants will be responsible for protecting the encryption and transaction code keys from unauthorised use.

The ACA will protect its copy of each registered applicant’s keys by appropriate internal security arrangements. The ACA will restrict access to the area where the keys are being used to authenticate bids to all but persons authorised by the ACA or escorted by a person authorised by the ACA.

If a registered applicant discovers that its encryption or transaction code keys have been compromised (through break-in, unauthorised access or any other reason), the registered applicant must immediately inform the ACA. The ACA will then prepare new keys for that registered applicant and forward them to the registered applicant.
The ACA may at any time issue new encryption and transaction code keys to a registered applicant, or to all registered applicants, if it comes to believe that the integrity of the auction may have been compromised.

Applicants must use the new keys.

In the period between a registered applicant notifying the ACA that the keys have been compromised and the ACA providing the registered applicant with replacement keys, the registered applicant’s participation in the auction will be suspended, without incurring a waiver.