Commonwealth of Australia

Radiocommunications Act 1992

Radiocommunications (Spectrum Licence Allocation) Determination 1998

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SCHEDULE

   Procedures for bid transmission (including automatic re-bids and withdrawal of bids) and authentication
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 or, in certain circumstances, at a pre-determined price.

Dated 4 February 1998.

A J Shaw Chairman

R Horton Deputy Chairman

Australian Communications Authority
Summary of Allocation System

Warning: 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 reallocation 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 subsection 39 or 39A of the Act, as applicable.

Each lot covers an area (and therefore a population) and a frequency band - for details, see the relevant Marketing Plan. 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 and bid price and as a performance bond over the 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.

Limits have been determined on the aggregate of the parts of the spectrum that may be allocated to any one person or group of persons who are associated. This Determination may contain a Part 1A that sets out procedures to be applied at each stage of the allocation process to ensure that those limits are not exceeded. For more detail about the limits and the procedures, see Part 1A.
PART 1—INTRODUCTION

Title

1.1 This Determination is called the Radiocommunications (Spectrum Licence Allocation) Determination 1998.

Commencement

1.2 This Determination commences on 4 February 1998.

Purpose of Determination

1.3 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 (see Part 3).

Definitions

1.4 (1) In this Determination, unless the contrary intention appears:
Act means the Radiocommunications Act 1992;
activity target, in relation to 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 2.14 (b);
Applicant Information Package has the meaning given by clause 2.3;
application documents means the documents listed in subclause 2.4 (2);
Application Form means the document approved by the ACA under paragraph 1.5 (a);
area has the meaning given by 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 clause 1.6;

**balance of the bid price** means the amount worked out in accordance with clause 5.2;

**bank cheque** means a bank cheque issued by a bank licensed to operate in Australia;

**bidder identification number** means the number assigned to an applicant by the ACA under subclause 2.10 (2)(a);

**closing date** means the date mentioned as the closing date for applications in the notice published under subclause 2.2 (1);

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

**Deed of Guarantee** means the document approved by the ACA under paragraph 1.5 (b);

**eligibility**, in relation to a registered applicant, means the registered applicant’s initial eligibility as varied during the auction;

**eligibility payment** means the eligibility payment worked out under clause 2.7;

**entry fee** means the entry fee payable by a prospective bidder;

**initial eligibility** means an applicant’s initial eligibility nominated in accordance with clause 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;

**Note:** The lot rating is determined by reference to the frequency band covered by the lot and the notional population assigned by the ACA to the area covered by the lot.

**Marketing Plan**, in relation to 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.

**pre-determined price**, in relation to a licence for 1 or more lots, means the price, determined under clause 3.2, of the licence for the lot or lots;

**register** means the register of applicants maintained by the ACA under clause 2.9;

**registered applicant** means an applicant registered under clause 2.10;

**stage** means a group of successive rounds of an auction to which the same percentage of eligibility, fixed under paragraph 2.14 (b), applies;
starting bid has the meaning given by subclause 2.13 (2);
successful applicant has the meaning given by clause 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:

- ACA
- frequency band
- marketing plan
- spectrum
- spectrum licence.

(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 dollars; 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 only 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 when:
(a) the registered applicant makes a bid on a lot in that round that exceeds the minimum bid on the lot, worked out in accordance with clause 4.12; or
(b) the registered applicant holds the highest bid on the lot from the previous round and does not withdraw the bid.

**Approval of forms**

1.5 The ACA must approve, in writing, the following documents:
(a) an Application Form;
(b) a Deed of Guarantee that complies with clause 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 clause 5.3.

**Note:** Approved forms for Part 1A are dealt with in that Part.
Auction manager

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

Ways in which the ACA gives information

1.7 (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) using the internet.

Communicating with ACA

1.8 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 be done electronically: see clause 4.8.
PART 1A—LIMITS ON ALLOCATION OF SPECTRUM

Division 1—Preliminary

Purpose of Part

1A.1 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 clause 1A.30 at the end of this Part:
   • associate
   • specified group of persons
   • major capital city
   • relevant agreement.
3. Other terms used in this Part are defined in clause 1.4.

Division 2—The allocation limits

Imposition of allocation limits

1A.2 (1) This clause 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) No person or specified group of persons may use more than:
(a) 15 MHz of spectrum in any major capital city in the frequency band 1710 MHz to 1755 MHz; and
(b) 15 MHz of spectrum in any major capital city in the frequency band 1805 MHz to 1850 MHz.
Division 3—Matters relevant to considering whether applicants associated

Matters relevant to considering whether applicants associated

1A.3 When considering, for this Part, whether 2 or more applicants are associated, the ACA must have regard to:

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

Division 4—Procedures before auction

ACA to send applications to ACCC

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

Applicants to provide statutory declarations

1A.5 (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 clause.

(4) A statutory declaration by an applicant that is a corporation must be made by a director of the corporation.
Exclusion of applicants because of failure to make statutory declaration

1A.6 An applicant who does not give the ACA a statutory declaration in accordance with clause 1A.5 is excluded from taking any further part in the auction and from obtaining a spectrum licence.

Consequences of exclusion

1A.7 (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.

Options available to associated applicants

1A.8 (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 subclause (2); and

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

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

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

(b) choosing not to withdraw in accordance with sub-clause (3).

(3) For subclause (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 clause 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 clause 1A.11, a completed application form.
Note: By virtue of subclause 1A.11 (3), other documents (referred to in subclause 2.4 (2)(b) and (c)), the entry fee and eligibility payment must all accompany the completed application form.

**Consequences of withdrawal**

1A.9 (1) The entry fee of an applicant who withdraws is not refundable.

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

**Consequences of applicants choosing not to withdraw**

1A.10 (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/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 subclause 1A.14 (2).

(2) Members choosing not to withdraw must acknowledge the consequences mentioned in subclause (1) when completing the approved form.

**Making a new application**

1A.11 (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) Clause 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 clause.

(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.

New application—limit on acceptance

1A.12 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.

Designation of applicants as associated applicants

1A.13 (1) If an applicant group does not tell the ACA that it is exercising 1 of the options under paragraph 1A.8 (2) within the period mentioned in subclause 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 clause 1A.29.

Consequences of designation as associated applicants

1A.14 (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 subclause (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 bid file mentioned in clause 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 subclause (2), a relevant bid 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 (subclause 2.10 (2)).

2. Acceptance of the first relevant bid file mentioned in clause 4.9 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**

**Detection of associated applicants during auction**

1A.15 (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 clause 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.

**Exclusion of applicants because of failure to make statutory declaration**

1A.16 An applicant who does not give the ACA a statutory declaration in accordance with clause 1A.15 is excluded from taking any further part in the auction and from obtaining a spectrum licence.

**Consequences of exclusion**

1A.17 (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.

(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 deductable under subclause (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 cannot be refunded until then.

Designation of associated applicants during auction

1A.18 (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 clause 1A.29.

Consequences of designation as associated applicants

1A.19 (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 subclause (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.

**Effect of designation of associated applicants on bidding**

1A.20 (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 subclause (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 clause 2.13(2)

*Note:* No bid withdrawal penalty will apply to an applicant if the ACA removes a high bid under subclause 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 subclause (1) and publish these using the auction computer system and the internet.
Telling other applicants of designation of associated applicants

1A.21 (1) If the ACA designates any applicants as associated applicants under clause 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

Successful applicants to make statutory declarations

1A.22 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.

Exclusion of applicants because of failure to make statutory declaration

1A.23 A successful applicant who does not give the ACA a statutory declaration in accordance with clause 1A.22 is excluded from obtaining a spectrum licence.

Consequences of exclusion

1A.24 (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 of an excluded applicant is refundable.

(4) 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.

(5) In working out the bid withdrawal penalties deductible under subclause (4), all successful bids of the applicant are taken to be withdrawn.

**Designation of associated applicants after auction**

1A.25 (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 clause 1A.29.

**Consequences of designation as associated applicants**

1A.26 (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.

Unsold lots

1A.27 A lot left unsold because of clause 1A.24 or 1A.26 may be allocated in the manner determined by the ACA as if the lot were an unsold lot for clause 6.1.

Moneys payable by a successful applicant

1A.28 (1) Imposition of a limitation on allocation to a successful applicant under subclause 1A.26 (2) does not affect the applicant’s obligation to pay, in the instalments mentioned in clause 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 clause 5.3.

Note: For balance of the bid price, see clause 1.4.

(3) If the price obtained for a lot when it is allocated under clause 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 subclause (1)) the amount (if any) for which the applicant is liable under subclause (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 subclause (1); or
(b) the amount paid is not enough to satisfy the liability under subclause (3);
the amount due under subclause (3) is a debt due to the ACA and recoverable from the successful applicant in a court of competent jurisdiction.

Division 7—General

Review

1A.29 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.

Definitions of terms used in this Part

1A.30 (1) In this Part:

Note: ACCC is defined in the Act.

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 clause 2.10 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 capital city* means a designated area described in the Schedule to the Spectrum Re-allocation Declaration No.3 of 1997, made under section 153B of the Act on 15 July 1997, to the extent that the area is within the territorial limits of Australia;

*re-allocation declaration* means the Spectrum Re-Allocation Declaration No.3 of 1997 made under section 153B of the Act on 15 July 1997;

*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.
(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

Entry fee and eligibility payment

2.1 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.

Publication of notice by ACA

2.2 (1) At least 1 month 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 subclauses (1) and (2), in other ways.
Applicant Information Package

2.3 (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 the part and 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 Guarantee;
   (h) the Deed of Acknowledgment;
   (i) the amount of the entry fee for the auction set by the ACA under paragraph 2.1 (a);
   (j) 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);
   (k) any limits imposed on the amount of spectrum that can be used by a person or group of persons as a result of the allocation;
   (l) the closing date and time for applications;
   (m) the address of the auction centre.

Note: The Minister may direct the ACA to limit the amount of spectrum that can be used in certain circumstances: see subsection 60(10) of the Act and Part 1A.

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

Applications

2.4 (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 Guarantee, if required by clause 2.8; and
   (c) a completed Deed of Acknowledgment.
(3) The application documents must have with them:
(a) an eligibility payment, worked out in accordance with clause 2.7; and
(b) the entry fee.

(4) The eligibility payment and entry fee must be paid by bank cheque, payable to the ACA.

Lodging of applications

2.5 (1) The application documents, eligibility payment and entry fee must be lodged with the ACA, at the auction centre, by the closing time on the closing date.

(2) As soon as practicable after receiving the application documents, the ACA must confirm by fax or, if the ACA does not know the applicant’s fax number, by letter, to the applicant the details shown on the Application Form.

(3) If the applicant wishes to change these details, the applicant must do so by written notice to the ACA (accompanied by a further eligibility payment if this is required) within 5 working days of the date of the fax or letter.

Initial eligibility

2.6 (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 this Determination contains a Part 1A—the limits imposed by the ACA under that Part.

Note: Part 1A deals with limits on the use of spectrum.

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

2. Subject to the limits set by clause 4.17 and Part 1A, 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.

Eligibility payment

2.7 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).

Deed of Guarantee

2.8 (1) A person who wishes to be registered as an applicant must give the ACA a Deed of Guarantee 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 subclause (2), that the applicant need not give the ACA a Deed.

(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 Guarantee; and

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

(3) Each guarantor is bound by force of this Determination to guarantee and indemnify the ACA as set out in the Deed of Guarantee.

(4) The amount guaranteed under the Deed must be at least an amount in dollars worked out by multiplying the initial eligibility nominated by the applicant by 5.
(5) A guarantor 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 clause, a corporation makes a Deed of Guarantee by affixing the corporation’s common or official seal to the Deed in accordance with the corporation’s constitution.

**Register of applicants**

2.9 (1) The ACA must maintain a register of applicants. The register may be in electronic form.

(2) 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.

*Note: ACN and ARBN are the relevant registration numbers for a company or body under the Corporations Law.*

(3) The register may also contain any other information that the ACA thinks necessary for the running of the auction.

(4) 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.

(5) 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.
Registration of applicants

2.10 (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, as required by clause 2.4; and
(b) if a Deed of Guarantee is required—the ACA is satisfied that the guarantor is a person who complies with subclause 2.8 (5).

(2) The ACA must assign to each registered applicant:
(a) a bidder identification number (BIN); and
(b) a password and encryption code keys to use with the auction computer linked to that BIN; 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 10 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, encryption code keys and transaction code keys.

Note: This Determination may contain a Part 1A dealing with measures to ensure that allocation limits are not exceeded. If it does, that Part provides that, in some circumstances, registered applicants who are members of a designated applicant group (see clause 1A.14) will be given a single BIN, password, encryption code key and transaction code key.

Publication of bidder identification numbers

2.11 (1) After the closing date but at least 10 working days before the start of the auction, the ACA must publish a notice in a newspaper circulating in Australia setting out:
(a) each applicant’s name, if the applicant is:
   (i) a company; or
   (ii) an individual who has consented to the publication of his or her name; and
(b) the initial eligibility of all applicants; and
(c) the bidder identification numbers of all applicants.

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

**Preparation for bidding**

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

*Note:* See clause 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, subclause (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**

**Increments and starting bids**

2.13 (1) After the closing date for applications, the auction manager must set the following 3 amounts:

(a) the starting bid 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 subclause 2.13 (1): see clause 4.13.
Stages of auction, eligibility percentage, waivers and first round

2.14 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 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 and analysis 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 clause 4.3; and
(g) tell all registered applicants of these matters.
PART 3—ALLOCATION FOR A PRE-DETERMINED PRICE

Allocation for a pre-determined price without an auction

3.1 (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.

The pre-determined price

3.2 (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.
This amount is the pre-determined price for the licence.

Note: The starting bid is worked out in accordance with subclause 2.13 (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.

Offer of licence

3.3 (1) The ACA will offer each applicant a licence 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; and
(b) a notice stating:
   (i) that the applicant is offered a licence for a bandwidth in the area nominated by the applicant; and
   (ii) the amount of the pre-determined price payable for the licence; 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; and
(v) that the offer is conditional on each other applicant accepting the licence offered or telling the ACA that it withdraws its application for a licence.

(3) The licence 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 pre-determined price.

(5) If an applicant tells the ACA that the applicant does not wish to be issued with a licence or withdraws, the ACA may proceed to allocate licences to the other applicants in accordance with subclause (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. The ACA will write to each applicant confirming this.

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

Payment of balance of pre-determined price

3.4 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 subclause 3.3 (6); and
(b) in 1 payment by bank cheque, payable to the ACA.

Withdrawal of offers

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

3.6 If an applicant does not pay the balance of the pre-determined price for a licence in accordance with clause 3.4:

(a) the applicant ceases to be entitled to be allocated the licence; and

(b) the eligibility payment made 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 are to be treated as unsold lots under clause 6.1.
PART 4—THE AUCTION

Division 1—Auction arrangements

Auction procedure

4.1 An auction consists of a number of stages, made up of a number of rounds. The auction opens, and the first round starts, on the starting date and time for that round set by the auction manager under paragraph 2.14 (f).

Rounds of an auction

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

(a) the bidding period—during which registered applicants make and, after the first round, may withdraw their bids;

Note: Withdrawal may be subject to penalties, as set out in clause 4.23.

(b) the results and analysis 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 and information for the round.
(2) In this clause:

results and information means the following results and information:

(a) all bids and bid withdrawals made during the round, rounded down to 4 significant digits;

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

(e) the schedule for the next round and the round after that, worked out from the times set by the auction manager under paragraphs 2.14 (d) and (e), having regard to the matters set out in clause 4.3;

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

(3) The information about a bid published under this clause must not identify the automatic re-bid limit of any applicant.

Schedule for a round

4.3 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 and analysis period starts; and

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

Rounds on a day

4.4 (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.
Recess days

4.5 (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.

Auction manager may vary the length of the bidding or results and analysis periods

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

(2) Before varying the length of time set for the bidding period or the results and analysis 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 and analysis 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.

Movement to next stages of auction

4.7 (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

Ways of taking part in the auction

4.8 (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) For this clause:
taking part means bidding, withdrawing a bid or exercising a waiver.

Electronic bidding procedure

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

(a) a registered applicant will use the bidding software available from the ACA to prepare its bid file for the round;
(b) the 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 bid file before transmission;
(d) the registered applicant will use the software to connect to the ACA’s auction computer system;
(e) the registered applicant will initiate a file transfer of the file to the ACA’s auction computer system;
(f) once the 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 bid file and record the bids.

(2) Details of procedures for bid transmission and authentication are set out in the Schedule.
Emergency telephone bidding procedure

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

(a) a registered applicant will 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 will quote the bidder identification number and transaction code key, as described in the Schedule, 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 the Schedule;

(e) the ACA will enter bids (including the amounts of any automatic re-bid), as dictated by the registered applicant, into the auction computer system as soon as practicable;

(f) the time of receipt of the bid will be taken to be the time that it was entered into the auction system by the ACA;

(g) the ACA will print out a confirmation of the bid (and the amount of any automatic re-bid) from the auction computer system;

(h) the ACA will send this to the registered applicant by fax, if the applicant has nominated a fax number;

(i) the ACA will process the bid (and any automatic re-bid) in the same way as it processes the bids made by registered applicants bidding electronically.

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

Identification of registered applicants

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

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

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

Note: For starting bids, see clause 2.13.

(2) After a starting bid has been made on a lot in a round, a bid on the lot below the minimum bid for the lot for that round will not be accepted. 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 price per lot rating set under clause 2.13, multiplied by the lot rating for the lot; and

(b) the increment of percentage of high bid set under clause 2.13, multiplied by that high bid.

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

(4) A registered applicant who had the high bid on a lot in a previous round is not required by subclause (2) to raise its own high bid, but may do so.

Changing starting and minimum bids

4.13 (1) Despite clause 4.12, at any time during the auction the auction manager may change the amounts fixed under subclause 2.13 (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) In 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.
Automatic re-bidding

4.14 (1) A registered applicant who makes a bid on a lot, or is the high bidder on a lot, in a round (a bidder) may automatically re-bid on the lot once by nominating an amount to which the automatic re-bid is to be limited.

(2) In working out the high bid in a round, an automatic re-bid made by the same bidder who made the next highest bid to the automatic re-bid is disregarded.

(3) 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 highest bidder for the lot in the round; and
   (b) the amount of the bid 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.

(4) If more than 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 who nominated the highest amount to which the automatic re-bid was limited is taken to be the highest bidder for the lot; and
   (b) the amount of the bid 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;
   (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.
(5) If more than 1 bidder makes an automatic re-bid that exceeds the high bid made or held 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 highest bidder for the lot in that round; and

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

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

All lots on offer simultaneously

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

General rules about bidding

4.16 (1) Subject to clauses 4.17 and 4.18, a registered 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 in the Application Form.

(2) In a round, a registered applicant may bid or withdraw a bid only once on each lot. A registered applicant must lodge all bids and bid withdrawals for a round at the one time.

Note: An automatic re-bid may be made once only: see clause 4.14.

(3) 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.

(4) If a bid is disputed:

(a) the auction manager is the sole arbiter; and

(b) the auction manager’s decision is final.
(5) 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 clause 4.10.

Eligibility bidding cap

4.17 (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.

(2) If the total of lot ratings of the lots where a registered applicant is active as a result of the applicant’s bidding exceeds this eligibility, the ACA:

(a) will process the bids in lot number order, starting with the lowest lot number; and

(b) when the total of the lot ratings of the lots where the applicant is active exceeds the eligibility, will not process that bid or any further bids; and

(c) will treat the bid and those further bids as not having been made.

Notes:
1. As to when an applicant is active, see subclause 1.4 (4).

2. The ACA may also impose bidding caps so as to ensure that the allocation limits mentioned in Part 1A are not exceeded.

Bidding activity targets

4.18 Subject to the waiver provisions in clause 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 applicant is active in that round is equal to or greater than the applicant’s activity target for the round.

Notes:
1. For activity target, see subclause 1.4 (1).

2. A registered applicant who does not bid in the way mentioned in this clause is liable to lose eligibility, in accordance with clause 4.19.
Loss of eligibility

4.19 (1) If:
   (a) a registered applicant does not meet its activity target in a round; and
   (b) the registered applicant does not exercise a waiver in that round;
the registered applicant’s eligibility for the next round will be reduced to an amount worked out in accordance with subclause (2).

(2) The amount of a registered applicant’s eligibility 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 clause 2.14) 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%, (i.e. 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 underway 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 clause.
Waiver

4.20 (1) During the bidding period of a round, a registered applicant who would otherwise not meet its activity target may exercise a waiver. A registered applicant may continue to exercise waivers until the applicant has used all its waivers fixed by the auction manager under clause 2.14.

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

(3) If:
   (a) a registered applicant bids in such a way that, but for this clause, 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;
the auction manager will exercise a waiver on the registered applicant’s behalf unless the registered applicant tells the auction manager, during the bidding period, that the waiver is not to be exercised.

(4) 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;
the round will not be regarded as the final round.

Note: For how to exercise a waiver, see clauses 4.8 and 4.9.

Withdrawal of bids

4.21 (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 subclause (1) and no other applicant has made a bid on that lot in the round:

(a) the ACA is taken to be the highest 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, 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 clause 4.22.

Note: For how to withdraw a bid, see clauses 4.8 and 4.9.

Loss of eligibility on withdrawal

4.22 If a registered applicant withdraws a bid in a round:

(a) the applicant will not be regarded as being active on that lot; and

(b) because of this, the applicant may lose eligibility.

Withdrawal penalty

4.23 (1) If:

(a) a 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 the withdrawn bid;

the applicant is liable to a penalty (the withdrawal penalty) equal to the difference between the withdrawn bid and the successful bid price.

Note: A bid cannot be withdrawn unless it is the high bid for the lot: see clause 4.21.
(2) If a registered applicant withdraws a bid on a particular lot and the lot is not sold at the auction, the applicant is liable to a withdrawal penalty equal to the difference between:

(a) the withdrawn bid and the next highest bid for the lot made by another bidder; or

(b) if there is no other bid for the lot—the withdrawn bid and zero.

(3) 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.

(4) The amount of all withdrawal penalties imposed on an unsuccessful applicant will be deducted from the applicant’s eligibility payment before any remaining portion is refunded. If the amount exceeds the eligibility payment, the balance is 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 clause 5.2.

Division 3—Bringing the auction to an end

Suspension or cancellation of auction

4.24 (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 start of the round during which it was suspended; or
   (b) resume the auction from the start of a previous round; or
   (c) cancel the auction.

(3) If the auction is cancelled:
   (a) all eligibility payments 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 s 60 of the Act about allocations other than by auction.

Closing of auction

4.25 (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.

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

Note: For suspension and cancellation of the auction, see clause 4.24. For the exercise of waivers, see clause 4.20.

(2) 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). In this case, 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.

(3) If the auction is closed under subclause (2), 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

Allocation of licence to highest bidder

5.1 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:

(a) the applicant pays the balance of the bid price calculated in accordance with clause 5.2, for all lots for which the applicant was the successful bidder, in accordance with clause 5.3; and

(b) allocation of the licence will not result in the allocation limits in Part 1A being exceeded.

Calculation of balance of bid price

5.2 (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 final bids made by the successful applicant;

(b) the ACA will add up the value of the bid withdrawal penalties imposed on the applicant under clause 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 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.

Payment of balance of bid price

5.3 (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 5 working days after the date of the notice; and
   (b) the remainder no later than 10 working days after that fifth working day.

(3) If a notice under subclause (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 5 working days after the date of the revised notice and the remainder no later than 10 working days after that fifth 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 10 working days after the date of the notice.

(5) Each payment is to be made:
   (a) at the auction centre; and
   (b) in 1 payment by bank cheque, payable to the ACA.

*Note:* For the issue of licences, see s 62 of the Act.

**Default**

5.4 If a successful applicant does not pay the balance of the bid price in accordance with clause 5.3:
   (a) the applicant ceases to be entitled to be allocated a licence at the auction; and
   (b) all highest bids made by the applicant will be treated as withdrawn bids and the applicant will be penalised in accordance with clause 4.23; and
   (c) any lots so affected will be regarded as defaulted lots; and
   (d) the total of the applicant’s bid withdrawal penalties will be deducted from the eligibility payment made by the applicant; and
(e) if the applicant’s bid withdrawal penalties exceed the amount of the applicant’s eligibility payment, the difference is a debt due to the ACA that may be recovered in a court of competent jurisdiction; and

(f) any amount paid by the applicant under paragraph 5.3 (2) (a) is forfeited to the ACA.

Allocation of defaulted lots

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

Refunds to unsuccessful applicants

5.6 An unsuccessful applicant is entitled to a refund of its eligibility payment, less the amount of any bid withdrawal penalties imposed in accordance with clause 4.23.
PART 6—MISCELLANEOUS

Unsold lots

6.1 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.

Notes:
1. Unsold lots include defaulted lots: see clause 5.5.
2. The ACA may make Determinations under s 60 of the Act about allocations other than by auction.

Liability of ACA

6.2 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.

Recovery of damages by ACA

6.3 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 Acknowledgement, Deed of Guarantee, statute, common law, equity or otherwise.

Giving of information by ACA

6.4 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.
**Information provided by applicant**

6.5 (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. This 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.
PROCEDURES FOR BID TRANSMISSION (INCLUDING AUTOMATIC RE-BIDS AND WITHDRAWAL OF BIDS) AND AUTHENTICATION

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.

To establish a connection, the auction software will transmit the registered applicant’s bidder identification number (4 characters) and password (8 characters) issued by the ACA.

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 bid; or

(b) to withdraw a bid; or

(c) 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. Bid files

Each bid file will be prepared in the form of a database following the Microsoft Access 2.0 specification. Before transmission, the file will be digitally signed with a 128 bit digital signature. 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 bid 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 bid 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 his or her 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 Encryptions 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, he or she 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:

(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), one of which must include the signature of the person presenting the identification.

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 his or her 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.