

EXPLANATORY STATEMENT

Australian Communications and Media Authority Act 2005

Australian Communications and Media Authority (Allocation Procedures - Reserve Prices) Direction No. 1 of 2012

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

Authority

Section 14 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act) provides that the Minister for Broadband, Communications and the Digital Economy (the Minister) may give written directions to the Australian Communications and Media Authority (ACMA) in relation to the performance of its functions and the exercise of its powers.

Purpose

The purpose of this Direction is to direct the ACMA to deal with reserve prices in its procedures (Allocation Procedures) under section 60 of the *Radiocommunications Act 1992* (Radcomms Act) for the allocation of the relevant spectrum but to not set the reserve prices until further directed by the Minister or sixty days after the ACMA advertises the spectrum for auction, whichever is the earlier.

Background

On 1 November 2011, the Minister declared spectrum in the following bands to be re-allocated by issuing spectrum licences:

- the 700MHz band - in the ranges 703 MHz to 748 MHz and 758 MHz to 803 MHz (*Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*); and
- the 2.5GHz band - in the ranges 2500 MHz to 2570 MHz and 2620 MHz to 2690 MHz (*Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2011*).

From April to September 2012 the ACMA undertook several public consultation rounds on the following draft instruments, in relation to both the 700MHz band and the 2.5GHz band:

- marketing plans for issuing spectrum licences, under section 39A of the Radcomms Act; and
- procedures to apply in allocating the relevant spectrum (Draft Allocation Procedures), under section 60 of the Radcomms Act.

The ACMA intends to re-allocate the radiofrequency spectrum in the two bands by auction to be conducted in or about April 2013. This Direction confirms that the Minister requires the spectrum to be first offered for allocation by way of auction.

The Direction requires the ACMA to deal with reserve prices for the auction in its Allocation Procedures and provide for the ACMA to set the reserve prices. A reserve price is also

commonly referred to as a ‘starting price’ or an ‘initial price’; it is the price below which an applicant may not place a bid for the spectrum at the auction. The Draft Allocation Procedures provide for the ACMA to set the initial price for the lots of each product for the first clock round. This initial price is equivalent to the reserve price for each lot, such that an applicant is not able to place a bid for an amount below this price.

The Draft Allocation Procedures, if made in their current form, would have provided that the ACMA must publish the initial price for the lots of each product no later than five days after publishing a notice about the auction. This Direction requires the ACMA to deal with reserve prices (initial prices) in the Allocation Procedures it will make but to defer the time by when it must set the reserve prices until the earlier of: the day after a further ministerial direction is given to the ACMA regarding reserve prices for the relevant spectrum; or sixty days after the ACMA publishes a notice advertising the auction. The notice must specify the relevant spectrum is to be auctioned, invite persons to apply to the ACMA to take part in the auction and state the time and date before which applications must be received by the ACMA and application fees paid.

The intention is that the Minister will direct the ACMA as to the specific amount it must set for the reserve prices. If no such further direction is made, then the ACMA may set the reserve prices sixty days after it advertises the auction. This will enable the applicants to know the minimum cost of the relevant spectrum in sufficient time to prepare for the auction.

This Direction is a legislative instrument under the *Legislative Instruments Act 2003* but it is not subject to disallowance: item 41 of the table in subsection 44(2) of that Act specifies that ministerial directions to any person or body are not subject to disallowance.

Consultation

The ACMA has been consulted in relation to this Direction.

Regulatory impact

The Office of Best Practice Regulation (the OBPR) has agreed that the regulatory changes arising from the instrument are minor or machinery in nature and that no further regulatory impact analysis is required.

Notes on Sections

Section 1 provides for the title of the Direction.

Section 2 provides that the Direction commences on the day it is made. It is anticipated that the Direction will be issued to the ACMA on that same day.

Section 3 provides that the Direction only applies to the parts of the spectrum specified in the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* and the *Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2011* (i.e. the ‘relevant spectrum’).

Section 4 provides that the Direction ceases 12 months after it commences.

Section 5 defines the terms used in the Direction.

Section 6 specifies the directions. Subsection 6(4) makes clear that nothing in this Direction prevents the ACMA from considering other relevant matters in making its Allocation Procedures.