

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Radiocommunications (Allocation of Transmitter Licences—High Powered Open Narrowcasting Licences) Determination 2014

Radiocommunications Act 1992

Purpose

The *Radiocommunications (Allocation of Transmitter Licences—High Powered Open Narrowcasting Licences) Determination 2014* (the Determination) sets out details of the procedures to be applied in allocating transmitter licences for high powered open narrowcasting services in spectrum that the Minister for Communications has designated as being primarily for broadcasting purposes and referred to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992* (the BSA). These licences will be allocated via a price based allocation system.

Legislative Provisions

The Determination is made under subsection 106 (1) of the *Radiocommunications Act 1992* (the Act). Under section 106, the Australian Communications and Media Authority (the ACMA) may determine, in writing, a price-based allocation system for allocating and/or issuing specified transmitter licences.

A determination made under section 106 of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA).

Background

In making or varying licence area plans (LAPs) under section 26 of the BSA, the ACMA may determine that one or more open narrowcasting services may be provided in a particular area of Australia using the broadcasting services bands. The broadcasting services bands are that part of the radiofrequency spectrum designated by the Minister for Communications in accordance with section 31 of the Act.

Providers of open narrowcasting services do not require a service licence under the BSA; the provision of such services is authorised by a class licence determined by the ACMA under section 117 of the BSA. However, the providers of such services need to obtain a transmitter licence issued under the Act if they propose to transmit their services using the radiofrequency spectrum. There is usually a high level of interest in obtaining transmitter licences for the transmission of open narrowcasting services, particularly those that authorise the transmission of high power open narrowcasting (HPON) services¹. Since 1996, transmitter licences for HPON services have been allocated using a price-based allocation system, determined under section 106 of the Act.

The *Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996* (the old Determination) was made in 1996 and registered on the Federal Register of Legislative Instruments on 11 May 2005. As a sunset instrument (one to which section 50 of the LIA applies), the old Determination was due to be automatically repealed by section 50 of

¹ An open narrowcasting service is an HPON service if the relevant transmitter licence allows the operation of a transmitter at a maximum power which exceeds 1 watt in a residential area, or 10 watts in a non-residential area.

the LIA, on 1 October 2015. As the ACMA considers that there is an ongoing requirement for a determination of this nature, with HPON services continuing to be provided for in LAPs, the ACMA made the Determination and repealed the old Determination.

The Determination largely replicates the old Determination, but the ACMA has sought to streamline the allocation process by simplifying or removing unnecessary legislative requirements and reducing costs to participants in the allocation process and administration costs.

Including provisions such as telephone bidding potentially removes a financial burden on bidders who have previously been required to attend ACMA offices to participate in an allocation process. Bidders still have the option to attend ACMA offices for bidding if they choose. Extending lodgment periods for payments and documentation should further reduce burden on participants in an allocation process.

The proposal to maintain a section 34 determination register (in place of a Schedule to the Determination) will reduce the administrative costs of the ACMA and improve its productivity by removing the need to amend the instrument each time new licences are available for allocation. It will also reduce the time required by the ACMA to commence an allocation process for HPON licences.

By virtue of subsection 100(2) of the Act, the ACMA may only issue a transmitter licence for open narrowcasting services if the spectrum for the licence has been made available by a decision under section 34 of the BSA (the section 34 determination), or the issue of the licence is in accordance with a determination under subsection 31(2) of the Act. No subsection 31(2) determination is in effect at this time.

Under section 34 of the BSA, if broadcasting services bands spectrum is available in a licence area, the ACMA may determine that it is available to providers of open narrowcasting services. In making this section 34 determination, the ACMA must have regard to the demand for spectrum for services other than broadcasting services, and the possible future demand for the use of that part of the radiofrequency spectrum.

Operation of the Determination

The Determination sets out the price-based allocation system for the allocation of transmitter licences for HPON services (HPON licences). Under section 106 of the Act, the Determination makes provision for how specified HPON licences will be allocated by a price-based method – an auction. The ACMA will auction HPON licences which are planned to operate at a geographic location on a specified frequency within the broadcasting services bands. The Determination only applies to HPON licences that authorise the use of spectrum that is both:

- (a) planned, in a LAP, to be for open narrowcasting services; and
- (b) covered by a section 34 determination, where that section 34 determination is included on a public register maintained under the Determination.

Auctions will generally be scheduled as and when HPON licences that fit the above criteria become available.

The Determination sets out in detail the procedures that will be used to allocate HPON licences. These include the requirements and responsibilities of both applicants and the ACMA throughout all stages of the allocation process. It also sets out clear rules and the potential consequences for non-compliance with the allocation process.

The Determination sets out the necessary application and registration process for parties to become eligible to participate and bid for licences at an auction. This includes the requirement to provide specified documentation and to pay applicable fees. The ACMA must set a reserve price for each licence on offer on or before the closing date for applications.

If more than one applicant registers for allocation of a particular licence, the ACMA will conduct a Licence Allocation Exercise by way of an open-outcry auction. Rules governing how applicants can bid on licences in the auction are also provided. The ACMA intends for auctions generally to be held at an ACMA office (Canberra, Melbourne or Sydney) with the option for registered applicants to participate in the auction via telephone bidding.

The Determination also sets out the rules that apply if there is only one registered applicant for a licence. In this circumstance, the licence is offered at the reserve price to the sole applicant, which must make the required payment and lodge appropriate documentation within a specified time period in order to be issued the licence.

Consultation

The ACMA has consulted with stakeholders and the general public on the Determination.

On 28 November 2013, the ACMA released the consultation paper, *Automatic sunset of legislative instruments – Proposal to remake the Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No.1 of 1996*. The consultation paper sought comment on the Determination, and detailed the purpose of the Determination and the changes that had been made from the old Determination.

The ACMA received no written submissions in response to the consultation paper.

The ACMA has also consulted with the ACCC on the Determination, in accordance with subsection 106(12) of the Act. The ACCC advised that it did not consider it necessary for the proposed Determination to include a requirement for the ACMA to give specified information to the ACCC. As a result of the ACCC's comments the Determination does not include an information sharing provision.

Regulation Impact

Prior to making the Determination, the ACMA consulted with the Office of Best Practice Regulation (the OBPR) on the requirement for a Regulation Impact Statement (RIS) for this legislative instrument. The OBPR advised that the proposed regulatory changes in the Determination (OBPR issue reference ID 14999) were minor or machinery in nature and did not warrant the preparation of a RIS.

Documents incorporated into the Determination by reference or otherwise referred to

The Determination incorporates the following documents by reference, or otherwise refers to them:

- > *Radiocommunications Act 1992*
- > *Broadcasting Services Act 1992*
- > *Australian Communications and Media Authority Act 2005*
- > *Corporations Act 2001*
- > *Legislative Instruments Act 2003*
- > *Broadcasting Services (Technical Planning) Guidelines 2007*
- > *Radiocommunications (Transmitter Licence Tax) Act 1983*
- > *Radiocommunications Taxes Collection Act 1983*

These instruments and Acts can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au/>).

Detailed Description of the Instrument

Details of the instrument are in Attachment A.

Statement of Compatibility with Human Rights

In accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the ACMA has prepared a Statement of Compatibility with Human Rights (the Statement of Compatibility) to consider the human rights implications of the Determination. The Statement of Compatibility concludes that the content of this legislative instrument does not raise any human rights issues and is therefore regarded as being compatible with human rights. The Statement of Compatibility prepared for this instrument is provided in Attachment B.

DETAILED DESCRIPTION OF THE INSTRUMENT**PART 1 PRELIMINARY**

This Part deals with the preliminary provisions of the Determination, such as the Determination's purpose and commencement, and the revocation of the old Determination. It also sets out the circumstances in which the Determination is applicable for the allocation of HPON licences and the requirement for the ACMA to maintain a public register of section 34 determinations for the provision of open narrowcasting services. The key terms used throughout the Determination are also defined in this Part.

Section 1 Name of Determination

This section names the Determination as the *Radiocommunications (Allocation of Transmitter Licences – High Powered Open Narrowcasting Licences) Determination 2014*.

Section 2 Commencement

This section provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 Revocation

This section revokes the old Determination, the *Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No.1 of 1996*.

Section 4 Purpose

This section states that the purpose of the Determination is to set out the procedures for allocating specified HPON transmitter licences to operate in the broadcasting service bands. These licences are to be issued by price-based allocation. These procedures cover all parts of the allocation process, including application, registration of bidders, withdrawal of applications, payment of fees, lodgment of forms, rules and requirements for participating in a licence allocation exercise (LAE) and other matters.

Section 5 Application of Determination

This section describes when the Determination applies to the allocation of an HPON licence. If:

- (a) the licence will authorise use of a device in radiofrequency spectrum that has been planned for use for an open narrowcasting service in a LAP; and
- (b) that spectrum has been made available for allocation in a section 34 determination; and
- (c) that section 34 determination has been included on the ACMA's register of section 34 determinations maintained under the Determination;

the ACMA must issue the licence in accordance with the rules set out in the Determination.

Section 6 Interpretation

This section defines terms used throughout the Determination. This section also provides that a reference to a business day in the Determination does not include a reference to public holidays in the Australian Capital Territory, New South Wales or Victoria.

Where a defined term is explained in more detail in this explanatory statement, a cross-reference to the relevant section is given below.

Application Fee: See section 9.

Authorised Agent: See paragraph 13(2)(c) or section 15.

Form of Acknowledgement: See subsection 11(5).

Form of Application: See subsection 11(4).

Form of Authority: See subsection 11(6).

Form of Indemnity and Guarantee: See subsection 11(8).

Licence Allocation Exercise: See section 22.

Lodge: See section 41.

Register: See section 7.

Registered Applicant: See section 14.

Reserve Price: See section 10.

Section 7 Register of section 34 determinations

This section sets out the requirements for a register of section 34 determinations for the purpose of licences allocated under the Determination. The register will be maintained by the ACMA and may be in electronic form. The register will include information about new section 34 determinations and variations. If the ACMA has revoked a section 34 determination or the section 34 determination has expired the ACMA must remove it from the register. The register will include the date of the section 34 determination or variation, the frequency and the geographic area where the frequency is available and the time period specified in the determination.

Where a section 34 determination is registered, the ACMA may *only* allocate an HPON licence that relates to the spectrum covered by that section 34 determination in accordance with the Determination. However, the ACMA is not compelled to register every section 34 determination it makes. Accordingly, the ACMA may allocate HPON licences that relate to spectrum covered by unregistered section 34 determinations otherwise than in accordance with the Determination. The register is, therefore, an important resource for identifying when the Determination will apply to allocation of HPON licences.

Part 2 Preparing for allocation

This Part provides details on the information the ACMA will provide to the public in relation to the proposed allocation of an HPON licence, including the public notification, application fee, reserve price, forms required and the method for payment.

Section 8 Publication of notice by the ACMA

Once a section 34 determination is registered under section 7, the ACMA may allocate an HPON licence for the radiofrequency spectrum covered by that section 34 determination in accordance with the Determination. Section 8 requires the ACMA to publish a notice about proposed allocations of HPON licences, and prescribes what information is to be included in the notice. The ACMA must invite applications for the licences that are to be available for allocation under the Determination and in accordance with the rules set out in the Determination. Information about the geographic location of the proposed licence; its nominal frequency or channel; the closing date and time for applications; the application fee and how it is to be paid; and contact details on how to obtain more information must also be included in the notice. The ACMA has the discretion to include any other information relating to the licence and may change information in the notice. If changes are required to a notice the ACMA must publish a new notice advising of the changes or corrections. The ACMA may decide how a notice will be published.

Under this section, the ACMA may publish the notice in any way it considers appropriate; under the old Determination, the ACMA had to publish an advertisement in a newspaper. The ACMA is most likely to at least publish the notice on its website, though it may publish in other or additional ways.

Section 9 Application Fee

An application fee is charged in accordance with the *Radiocommunications (Charges) Determination 2007*. The amount set will be included in the published notice about the proposed allocation and must be paid as part of a valid application.

Section 10 Reserve Price

The ACMA is required to set a reserve price for a licence on or before the closing date for applications for the licence, as specified in the notice. If there is only one applicant for the licence (as defined in Part 5 of the Determination), then the reserve price becomes the total price for the licence.

Section 11 Forms

The ACMA must approve the forms required by this section. These are the Form of Application, Form of Acknowledgement, Form of Authority and Form of Indemnity and Guarantee. An applicant may only submit forms that have been approved by the ACMA.

The Form of Application must include the name of the applicant and HPON licence the applicant is interested in.

The Form of Acknowledgement requires the applicant to sign off on a number of statements about the terms and conditions a successful applicant may need to meet before the issue of a licence.

The Form of Authority is to be completed by the applicant should it require an agent to act on its behalf at a LAE including, if it becomes the successful applicant, for the completion and lodgment of the Form of Acknowledgment. Each Form of Authority can only relate to the authorisation of one agent. Applicants which are companies or incorporated associations must complete a separate Form of Authority for each authorised agent to act for the applicant, for each licence applied for.

The Form of Indemnity and Guarantee requires the applicant to execute a deed which indemnifies the ACMA from costs or losses the ACMA may incur or suffer as a result of any act or omission by the applicant or its authorised agent during the allocation process for an HPON licence. If the applicant is a company or incorporated body, a director or office-bearer must also complete a similar indemnity.

Section 12 Payment of Amounts

This section sets out the manner in which payments under the Determination may be made to the ACMA. Amounts can be paid to the ACMA by bank cheque or by electronic transfer and must be made in Australian currency.

Where an applicant pays an amount by bank cheque, the payment will have been made by the deadline specified in the Determination if the ACMA receives the bank cheque by that deadline.

Where an electronic transfer is used, the ACMA must receive evidence (such as a transfer receipt) from the applicant that an electronic transfer has been made for the full amount (see below for information about bank charges and government duties). An applicant will be taken to have made a payment by the specified deadline, provided the ACMA receives the full amount in the ACMA's nominated bank account within three business days after the deadline and the applicant gives the ACMA the evidence that the transfer was made before the deadline. Where full payment is not received within three business days, the payment will be taken to have been made if the applicant can show that it has taken all reasonable steps to ensure that the amount was transferred to the ACMA's nominated bank account by the due date.

This section also provides that a payment will not be considered to have been paid in full where bank charges or government duties imposed on the payment reduce the amount to less than the amount due. An applicant is responsible for ensuring that any bank charges or government duties imposed on a payment do not reduce the payment received by the ACMA to less than the full amount due.

Part 3 Registering for an allocation

This Part sets out how interested parties can apply to take part in a LAE. It describes the application and registration processes, including the ACMA's obligations to make information about the allocation process publicly available. It also sets out the bidding process, payment of money and the requirements of the ACMA for issuing a licence.

Section 13 Applications

A person may apply for more than one licence, but must complete a separate application for each licence. The ACMA may only accept an application if it is lodged on or before the closing date and time as specified in a notice published under section 8, and is accompanied by the Form of Indemnity and Guarantee and a Form of Authority in the case of a company or incorporated body applying. All forms need to be fully completed and legible, and the application fee must be paid.

Section 14 Registration of applicants

This section requires the ACMA to register all applications it has accepted under subsection 13(2) and give the application a registration number.

Section 15 Lodgment of Form of Authority

This section makes provision for an applicant to lodge a Form of Authority with the ACMA up to 2 business days prior to a LAE should it require an agent to act on its behalf.

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

This Part details the allocation process, setting out the requirements of both the ACMA and registered applicants when there are two or more registered applicants for a licence.

Section 16 Application of Part 4

If applications have been received by the closing date for a licence that has been included in a notice under section 8 and there are two or more registered bidders, then the allocation process set out in Part 4 applies.

Section 17 Licence Allocation Exercise to be conducted

So long as there remains more than one registered applicant for an HPON licence, and so long as the ACMA does not terminate the issue of the licence, section 17 requires the ACMA to conduct a LAE for the licence. This section also allows for the ACMA to conduct a number of LAE's on the one day and at the same place.

Section 18 Notice of Licence Allocation Exercise

This section sets out the requirements for the ACMA in relation to notifying registered applicants that a LAE is to be conducted. The notice must be sent to the registered applicants at least 10 days prior to the LAE and include the date, time and place of the LAE. The ACMA may include other information in the notice and may also change the date, time and place but must provide the registered applicants with another notice updating the details. Subsequent notices may be given less than 10 days before the LAE. On the day of the LAE the ACMA may decide to change the starting time later in the day but must publicly announce the new time at the place where the LAE is to be held.

Section 19 Withdrawal of application

This section allows for a registered applicant to withdraw its application for a licence any time up until the scheduled start time of a LAE. The registered applicant must do so by lodging a notice to that effect.

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

This section describes the allocation process when all but one of the registered applicant withdraws. In this instance Part 5 of the Determination applies to the remaining registered applicant.

Section 21 Who may bid at a Licence Allocation Exercise?

This section states who is eligible to bid at a LAE. The person needs to be either a registered applicant or an authorised agent of the registered applicant for the licence. Before a person may bid at the LAE they will be required to show proof of identity. An Australian driver's licence or passport is an acceptable form of identification. The registered applicant or authorised agent will also need to be allocated a bidding number by the ACMA before they may participate at the LAE.

Section 22 Bidding

This section explains the bidding process at a LAE. The person authorised to conduct the LAE (see section 43) may start the bidding at an amount they consider appropriate. If the bids for a licence do not reach the set reserve price the LAE will be terminated. If there are any disputes concerning a bid or the conduct of the LAE the person conducting the LAE must consider the dispute and may decide whether to continue the LAE, terminate the LAE, or re-start the bidding at an amount considered appropriate.

Section 23 Telephone Bidding

If a registered applicant would like to participate in a LAE by telephone they must apply in writing to the ACMA no later than 5 business days before the commencement of the LAE. If the ACMA gives approval for telephone bidding it must provide the registered applicant with a password and 4 digit identification number. Before a registered applicant can participate at the LAE by telephone they must provide their password and 4 digit identification number to the ACMA for verification purposes immediately before the LAE commences. The old Determination did not make provision for telephone bidding.

Section 24 Form of Acknowledgement to be lodged

The applicant or authorised agent must submit a completed and legible Form of Acknowledgement within 10 business days after becoming the successful applicant for the licence.

Section 25 Form of Acknowledgement not lodged

If section 24 is not complied with then the successful applicant ceases to be the successful applicant.

Section 26 Payment of winning price

The successful applicant must pay the winning price to the ACMA within 10 business days of becoming the successful applicant. If payment does not occur within the timeframe then the successful applicant ceases to become the successful applicant. The successful applicant may continue to be the successful applicant after the end of the tenth business day if the ACMA has decided to extend the period for payment.

Section 27 Issue of Licence

As long as the issue of a licence is consistent with the ACMA's spectrum plan and relevant frequency band plan (see section 37), and the issue of the licence has not been terminated under section 34, the

ACMA must issue the licence to the successful applicant as soon as practicable after the winning price has been paid.

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

This Part sets out the allocation process where there is only one registered applicant for a licence on offer.

Section 28 Application of Part 5

This section states that if only there is only one registered bidder for a licence then Part 5 applies to the allocation of the licence.

Section 29 Notice to successful applicant

The ACMA is required, within 5 business days after the closing date for applications, to notify the single registered applicant for a licence that it is the successful applicant for the licence. The notice will include information about the reserve price (which is the price payable for the licence), ACMA bank details, when payment and the lodgment of a Form of Acknowledgment is required and the last day when the successful applicant may withdraw its application.

Section 30 Payment of reserve price and lodging a Form of Acknowledgement

Unless the successful applicant withdraws its application (see section 33) within the timeframe specified in the ACMA's notice (subparagraph 29(a)(v)), it must pay the reserve price for the licence and lodge the Form of Acknowledgement by the last day detailed in the notice (subparagraph 29(a)(iv)).

Section 31 Reserve price not paid or Form of Acknowledgement not lodged

If the successful applicant fails to comply with section 30 by paying the reserve price and submitting a Form of Acknowledgement, it ceases to be the successful applicant for the licence. The successful applicant may continue to be the successful applicant if the ACMA has decided to extend the timeframe for compliance and has notified the successful applicant of the change. The ACMA may only extend the period of compliance if it has not re-offered the licence (see subsection 36(4)).

Section 32 Issue of licence

As long as the issue of the licence is consistent with the ACMA's spectrum plan and relevant frequency band plan (see section 37) and the issue of the licence has not been terminated under section 34, the ACMA must issue the licence to the successful applicant as soon as practicable after the applicant has complied with section 30.

Section 33 Withdrawal of application

A person who is the only registered applicant for a licence (as specified under section 28), may withdraw its application by submitting a notice to that effect within the timeframe detailed under subparagraph 29(a)(v).

Part 6 Miscellaneous

This Part describes various miscellaneous administrative matters that apply to the allocation process, including terminating of the proposed issue of licences, conducting a new LAE and the re-offer of a licence, the circumstances when a licence cannot be issued and extending timeframes for compliance. This Part also details the liability of a person that does not comply. It also contains provisions for the ACMA to appoint agents to take on roles in relation to the process of allocating licences.

Section 34 Termination of proposed issue of a licence

The ACMA may terminate a proposed issue of a licence at any time prior to the licence being issued.

Section 35 Refund of reserve price or winning price

If the ACMA terminates a proposed issue of a licence it must refund any money paid including any part of the reserve price paid under section 30 and any part of the winning price paid under subsection 26(1).

Section 36 New Licence Allocation Exercise and re-offer of licence

This section sets out the circumstances when the ACMA may re-offer licences.

If at the closing date and time included in a notice inviting applications under section 8 there are no registered applicants, the ACMA may re-offer the licence for issue.

The ACMA may also re-offer a licence if a LAE or proposed issue of a licence is terminated, or the LAE is held for a licence and the successful applicant ceases to be a successful applicant, or the licence is not issued to the successful applicant for some other reason under the Determination. In these instances the ACMA may hold a new LAE for the licence on the same day or re-offer the licence for issue.

If a new LAE is to be held on the same day the ACMA must announce publicly the time and place when the new LAE is to be held. The allocation process detailed in Part 4 of the Determination (allocation of licence if there is more than one registered applicant) will apply to the new LAE, with the exception of sections 16, 17 and 18. Previously registered applicants and authorised agents for the relevant licence need not re-apply or pay another application fee and the reserve price will not change.

If Part 5 of the Determination applies (that is, there is only one registered applicant for the licence), the ACMA may re-offer the licence if the former successful applicant ceases to be the successful applicant; or the licence is not issued to the former successful applicant; or the proposed issue of a licence is terminated. Subsection 36(6) states that if a licence is to be re-offered because a former successful applicant or its authorised agent did not comply with the requirements in sections 24, 26 (1) or 30, then that former successful applicant no longer continues to be a registered applicant, and its authorised agent no longer continues to be an authorised agent in relation to the licence re-offer and may not apply again for the licence.

Section 37 Licence not to be issued in certain circumstances

The ACMA must not issue a licence to an applicant if the licence is inconsistent with the ACMA's spectrum plan made under subsection 30(1) of the Act; or is inconsistent with a relevant frequency band plan.

Section 38 Duration of a Licence

A licence has effect from the day of issue and will cease to have effect at the end of the period specified in the section 34 determination.

Section 39 Extension of time

This section makes provision for the ACMA to extend the timeframe for which an applicant is required to do anything specified in the Determination, whether or not the time period has expired. This section also clarifies that if the due day happens to fall on the weekend or a public holiday in the ACT, New South Wales or Victoria, then the day for doing anything under the Determination is the next business day following that day.

Section 40 Notices

When the ACMA is required to give notices under the Determination, notices will be given to the contact person specified by the applicant in the Form of Application. The section also states the ACMA is required to issue a notice in writing and may deliver notices by facsimile transmission or email.

Section 41 Lodgment

The section requires the ACMA to specify in writing where and how forms are to be submitted to the ACMA.

Section 42 Liability of person etc for failure to comply

This section makes it clear that the Determination does not limit any right of action or remedy that the ACMA may have to recover damages from a successful applicant or its authorised agent if they have not paid the winning price or reserve price or lodged the Form of Acknowledgement.

Section 43 ACMA may appoint agent

This section sets out when the ACMA may appoint persons as its agents for receiving applications and monies in relation to the allocation process and conducting a LAE.

Section 44 Delegation

This section makes provision for the ACMA to delegate any of its functions and powers under the Determination to a member, or associate member, or member of staff of the ACMA.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Radiocommunications (Allocation of Transmitter Licences—High Powered Open Narrowcasting Licences) Determination 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Under section 106 of the *Radiocommunications Act 1992* (the Act), the Australian Communications and Media Authority (ACMA) may determine in writing a price based allocation system for allocating and/or issuing specified transmitter licences.

Providers of open narrowcasting services do not require a service licence under the *Broadcasting Services Act 1992*, but if they wish to use broadcasting services bands to provide their services they do need to obtain a transmitter licence under the Act to transmit the proposed service. There is usually a high level of interest in obtaining licences for open narrowcasting services, particularly high powered open narrowcasting (HPON) services (a service is ‘high power’ if the transmitter operates at more than 1 watt in a residential area or at more than 10 watts in a non-residential area).

Accordingly, the *Radiocommunications (Allocation of Transmitter Licences – High Powered Open Narrowcasting Licences) Determination 2014* was made under section 106 of the Act. This legislative instrument sets out in detail the procedures that will be used to allocate transmitter licences for HPON services. These include the requirements and responsibilities of both applicants and the ACMA throughout all stages of the allocation process. It also sets out clear rules and the potential consequences for breaching any parts of the instrument.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority