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

*Radiocommunications Act 1992*

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under subsection 106 (1) of the *Radiocommunications Act 1992*.

Dated *11th April* 2014

*Chris Chapman*
[signed]
Member

*Richard Bean*
[signed]
Member/~~General Manager~~

Australian Communications and Media Authority

Part 1 Preliminary

1 Name of Determination

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

2 Commencement

 This Determination commences the day after it is registered.

*Note*   All legislative instruments must be registered on the Federal Register of Legislative Instruments required to be maintained under the *Legislative Instruments Act 2003*. See http://www.frli.gov.au.

3 Revocation

 The *Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996* is revoked.

4 Purpose

 This Determination sets out a price-based allocation system for allocating and issuing specified HPON licences.

5 Application of Determination

 (1) If the ACMA wishes to issue a HPON licence (other than by way of renewal of an existing HPON licence in accordance with section 130 of the Radiocommunications Act) in the parts of the radiofrequency spectrum:

 (a) determined to be available for allocation under a section 34 determination included on the Register; and

 (b) planned for use by an open narrowcasting service in a licence area plan;

 the ACMA must allocate and issue the licence in accordance with the price-based allocation system set out in this Determination.

*Note* This Determination does not apply to a HPON licence that authorises the operation of a transmitter on a frequency or frequencies, or on a frequency channel, that is or are in a part of the radiofrequency spectrum determined to be available for allocation under a section 34 determination that is not included on the Register.  Accordingly, if the ACMA does not include a section 34 determination that deals with a  particular frequency on the Register, it may allocate and issue a HPON licence otherwise than in accordance with this Determination.

 (2) This Determination does not apply to a HPON licence that was allocated before the commencement of this Determination.

6 Interpretation

(1) In this Determination, unless the contrary intention appears:

***ACMA*** means the Australian Communications and Media Authority.

***application fee*** means the amount set in section 9.

***Australian Driver’s Licence*** means a licence to drive a motor vehicle issued or granted under an Act or legislative instrument of a State or Territory.

***authorised agent*** means an individual for whom a Form of Authority has been lodged under paragraph 13 (2) (c) or section 15.

***Broadcasting Services Act*** means the *Broadcasting Services Act 1992*.

***business* *day*** means a day that is not:

 (a) a Saturday;

 (b) a Sunday; or

 (c) a public holiday in any of:

 (i) the Australian Capital Territory;

 (ii) New South Wales; or

 (iii) Victoria.

***company*** means:

 (a) a company within the meaning of the *Corporations Act 2001*; or

 (b) a foreign corporation within the meaning of the Constitution.

***complete***, for a form, includes sign or seal, as the case requires.

***Form* *of Acknowledgment*** means the form described in subsection 11 (5).

***Form of Application*** means the form described in subsection 11 (4).

***Form of Authority*** means the form described in subsection 11 (6).

***Form of Indemnity and Guarantee*** means the form described in subsection 11 (8).

***HPON licence*** means a transmitter licence which authorises the operation of a transmitter for the provision of an open narrowcasting service at a maximum power which exceeds:

1. if the transmitter is operated in a residential area – 1 watt;
2. if the transmitter is operated in a non-residential area – 10 watts.

***licence*** means a HPON licence.

***Licence Allocation Exercise*** means the procedure set out under section 22 for identifying a successful applicant where there is more than one registered applicant for a licence.

***licence area plan*** means a licence area plan prepared under subsection 26 (1) of the Broadcasting Services Act.

***lodge*** means lodge as required by the ACMA under section 41.

***non-residential area*** means an area other than a residential area.

***open narrowcasting service*** has the meaning given by section 18 of the Broadcasting Services Act.

***Radiocommunications Act*** means the *Radiocommunications Act 1992*.

***Register*** means the register maintained under section 7.

***registered applicant*** means an applicant for whom an application has been registered and allotted a unique registration number by the ACMA under section 14.

***reserve price***, for a licence, means the reserve price set by the ACMA under section 10.

***residential area*** has the meaning given by the *Broadcasting Services (Technical Planning) Guidelines 2007*.

***section 34 determination*** means a determination made by the ACMA on a date specified in the Register, under subsection 34 (1) of the Broadcasting Services Act, that specified parts of the radiofrequency spectrum are available for allocation for a specified period for the provision of open narrowcasting services.

***successful applicant***, for a licence, means:

 (a) if there is more than one registered applicant for the licence — the registered applicant who, or whose authorised agent, has bid an amount that is:

 (i) the highest bid for that licence; and

 (ii) at least the reserve price for the licence;

 at a Licence Allocation Exercise held for the licence; or

 (b) if there is only one registered applicant for the licence — the registered applicant.

***winning price***, for a HPON licence which is allocated in accordance with Part 4, means the amount of the price bid for the licence by the successful applicant or its authorised agent.

*Note*   Paragraph 13 (1) (b) of the *Legislative Instruments Act 2003* provides that expressions used in this Determination have the same meaning as in the Radiocommunictions Act as in force from time to time.

 (2) Unless the contrary intention appears a day is taken to end, for the purposes of this Determination (other than section 38), at 5 p.m. in the Australian Capital Territory.

7 Register of section 34 determinations

 (1) The ACMA must maintain a public register (***Register***) of section 34 determinations for the purposes of this Determination.

 (2) The ACMA may maintain the Register by electronic means.

 (3) The ACMA may register a section 34 determination on the Register.

 (4) If a section 34 determination that is on the Register is varied, the ACMA must include the variation on the Register.

 (5) The ACMA may remove a section 34 determination from the Register, if:

 (a) the ACMA has published a notice under subsection 8 (1) or (5) that relates to the section 34 determination; and

 (b) neither of the following has occurred in relation to that notice:

(i) the ACMA has issued a licence because of section 27;

(ii) the ACMA has issued a licence because of section 32.

 (6) The ACMA must remove a section 34 determination from the Register if:

 (a) the ACMA has revoked the section 34 determination; or

 (b) the period specified in the section 34 determination has expired.

 (7) If a section 34 determination is removed from the Register, the ACMA must remove any variations of that section 34 determination from the Register.

 (8) The Register is to contain the following information for each registered section 34 determination and each registered variation of a section 34 determination:

 (a) the date the determination or variation was made;

 (b) the frequency determined to be available, and the geographic area where that frequency is available;

 (c) the period specified in the determination.

 (9) The Register may contain such other information as the ACMA considers relevant.

Part 2 Preparing for allocation

8 Publication of notice by the ACMA

 (1) The ACMA must publish a notice about the proposed allocation of a HPON licence in any way that the ACMA considers appropriate.

 (2) The notice must:

 (a) include an invitation for applications for the licence that comply with the requirements of this Determination; and

 (b) include a statement that the ACMA proposes to allocate and issue the licence in accordance with the system set out in this Determination; and

 (c) describe the geographic location for which the ACMA proposes to issue the licence; and

 (d) specify the nominal carrier frequency or channel on which the licence is proposed to authorise the operation of a transmitter for the provision of open narrowcasting services; and

 (e) specify the closing date and time for an application for the licence; and

 (f) give details of:

 (i) the application fee to be paid by the applicant; and

 (ii) how it must be paid; and

 (g) give details of how to obtain further information, in particular, details of how to obtain an information package that includes forms necessary for taking part in the allocation of the licence.

 (3) A notice may include any other information relating to the licence.

 (4) The ACMA may change a matter that is set out in a notice.

 (5) If the ACMA changes a matter set out in a notice, or any of the information in a notice is or becomes incorrect, the ACMA must publish another notice giving information about the changed matter, or the correct information, in any way that the ACMA considers appropriate.

9 Application fee

The application fee is the charge fixed by the *Radiocommunications (Charges) Determination 2007* for, or in relation to:

 (a) considering an application under this Determination; or

 (b) if there is no reference in the *Radiocommunications (Charges) Determination 2007* to this Determination – considering an application for a transmitter licence for a high powered open narrowcasting service to be allocated using a price-based allocation system under the *Radiocommunications (Issue of Broadcasting (Narrowcasting) Transmitter Licences) Determination No. 1 of 1996* immediately prior to the commencement of this Determination.

10 Reserve price

 At or before the closing date and time for applications for a licence included in a notice published under subsection 8 (1) or (5), the ACMA must set a reserve price for the licence.

*Note*   If Part 5 applies to the proposed issue of a licence, the reserve price for the licence becomes the total price of the licence.

11 Forms

 (1) The ACMA must approve the forms set out in this section.

 (2) An applicant must use only a form approved by the ACMA.

 (3) A form may require an applicant to disclose relevant information or provide documents that the ACMA considers necessary, in addition to the information or documents required to be part of the form by this section.

Form of Application

 (4) The ACMA may approve a Form of Application that, when completed by an applicant, will:

 (a) show the applicant’s name; and

 (b) identify the HPON licence for which the applicant is applying.

Form of Acknowledgment

 (5) The ACMA may approve a Form of Acknowledgment that, when completed by a successful applicant, will contain statements to the following effect:

 (a) that the successful applicant has relied solely on:

 (i) its own skill, judgment and investigations; or

 (ii) the skill, judgment and investigations of persons acting on its behalf;

 in applying for the HPON licence mentioned in the Form and in forming its opinion of the value of the licence; and

 (b) that the successful applicant is aware that becoming a successful applicant does not entitle it to be issued a licence; and

 (c) that the successful applicant is aware that the fact that the successful applicant, or its authorised agent, is the highest bidder at any Licence Allocation Exercise for the licence does not, of itself, entitle the successful applicant to be issued the licence; and

 (d) that the successful applicant is aware that a licence will not be issued to it if the full amount payable under this Determination for the issue of the licence has not been paid by the successful applicant or its authorised agent; and

 (e) that the successful applicant is aware that it may be liable to the ACMA in damages for any loss suffered by the ACMA as a result of conduct of the successful applicant or its authorised agent.

*Note*   See section 42 regarding applicant’s liability.

Form of Authority

 (6) The ACMA may approve a Form of Authority that, when completed by an applicant, will authorise the person named as agent in the Form:

 (a) to bid at the Licence Allocation Exercise (if any) that is held for the HPON licence mentioned in the Form; and

 (b) if the applicant becomes the successful applicant for the licence by way of a Licence Allocation Exercise, to complete and lodge, on behalf of the applicant, the Form of Acknowledgment for the licence; and

 (c) to do anything else that is reasonably necessary or incidental to the things set out in paragraphs (a) and (b).

 (7) Each Form of Authority must relate to the authorisation of only one agent.

Form of Indemnity and Guarantee

 (8) The ACMA may approve a Form of Indemnity and Guarantee in the form of a deed that will, when completed, give the ACMA:

 (a) an indemnity by an applicant against any loss or costs that the ACMA may suffer or incur as a result of any act, default or omission by the applicant or its authorised agent at any stage during an allocation of the HPON licence that is mentioned in the Form; and

 (b) if the applicant is a company or incorporated association — a similar indemnity by a director or office-bearer of the applicant in case the applicant is called on to perform its obligations under its indemnity and fails to do so.

12 Payment of amounts

 (1) An amount paid to the ACMA on behalf of the Commonwealth under this Determination must be paid in Australian currency.

 (2) An amount must be paid by bank cheque or by electronic transfer.

 (3) An electronic transfer must be made into the bank account with the following details:

 (a) Bank—ANZ Bank;

 (b) Branch—Belconnen;

 (c) BSB number—012-951;

 (d) Account number—8379 24272;

 (e) Account name—ACMA Official Administered Receipts;

 or such other account as specified by the ACMA.

 (4) An amount is taken to have been paid by a deadline specified in this Determination if either:

 (a) the ACMA receives a bank cheque for the full amount on or before the deadline; or

 (b) both:

 (i) the ACMA receives evidence that an electronic transfer of the full amount was made on or before the deadline (such as a transfer receipt); and

 (ii) the amount is received in the ACMA’s bank account no later than 3 business days after the deadline; or

 (c) the ACMA receives other evidence which satisfies the ACMA that the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.

 (5) An amount due under this Determination is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the amount due.

*Note*The effect of this subsection is that an applicant or bidder must add the value of any bank charge or government duty to the amount of a payment.

Part 3 Registering for an allocation

13 Applications

 (1) A person:

 (a) may apply for more than one licence; and

 (b) may make only one application for any one licence; and

 (c) must make a separate application for each licence for which it wishes to apply.

 (2) The ACMA may accept an application for a licence only if, on or before the closing date and time for the application set out in the notice under subsection 8 (1) or (5):

 (a) the applicant has lodged a completed and legible Form of Application; and

 (b) the applicant has lodged a completed and legible Form of Indemnity and Guarantee; and

 (c) if the applicant is a company or incorporated association — the applicant has lodged at least one completed and legible Form of Authority; and

 (d) the applicant has paid the application fee in accordance with the notice.

14 Registration of applicants

 If the ACMA accepts an application under subsection 13 (2), the ACMA must register the application and allot to the application a unique registration number.

15 Lodgement of Form of Authority

 In addition to the requirement in paragraph 13 (2) (c), a registered applicant for a licence may lodge a completed and legible Form of Authority not later than 2 business days before the day of the Licence Allocation Exercise (if any) that may be held for the licence.

*Note*   The ACMA must not accept an application for a licence from an applicant that is a company or incorporated association unless the applicant has lodged at least one completed and legible Form of Authority: see paragraph 13 (2) (c).

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

16 Application of Part 4

 This Part applies if, at the closing date and time for applications for a licence included in a notice published under subsection 8 (1) or (5), there are 2 or more registered applicants for the licence.

17 Licence Allocation Exercise to be conducted

 (1) Subject to section 20, the ACMA must conduct a Licence Allocation Exercise for the licence unless the issue of the licence is terminated under section 34.

 (2) Nothing in this Determination prevents the ACMA from holding 2 or more Licence Allocation Exercises on one day in one place.

18 Notice of Licence Allocation Exercise

(1) If a Licence Allocation Exercise is to be held for a licence, the ACMA must give to each registered applicant for the licence, at least 10 days before the day when the Licence Allocation Exercise is to be held, a notice setting out:

 (a) the date, time and place of the Licence Allocation Exercise; and

 (b) any other information that the ACMA considers necessary.

 (2) If the ACMA decides, at any time after the notice has been given, to change the date, time or place of the Licence Allocation Exercise, the ACMA must give each registered applicant a further notice setting out the new date, time and place.

 (3) However, if the ACMA decides, on the day when a Licence Allocation Exercise is to be held, to commence the Exercise later on that day than the time mentioned in a notice under subsection (1) or (2) (as the case may be), the ACMA must publicly announce the new time at the place where the Exercise is to be held.

 (4) A notice given under subsection (2) may be given less than 10 days before the day when the Licence Allocation Exercise is to be held.

19 Withdrawal of application

 A registered applicant described in section 16 may withdraw its application for a licence by lodging a notice to that effect before the time when the Licence Allocation Exercise for the licence is to start.

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

(1) Subsection (2) applies if:

 (a) more than one registered applicant has applied for a particular licence; and

 (b) all but one of the registered applicants withdraw their applications for the licence before the time when the Licence Allocation Exercise for the licence is to start.

 (2) Part 5 applies to the remaining registered applicant as if:

 (a) the applicant had been the only registered applicant for the licence; and

 (b) the closing date for applications for the licence was the day when the last of the other applications was withdrawn.

21 Who may bid at a Licence Allocation Exercise?

 (1) A person may bid for a licence at a Licence Allocation Exercise only if he or she is:

 (a) a registered applicant for the licence; or

 (b) an authorised agent of a registered applicant for the licence.

 (2) A registered applicant or an authorised agent must not bid at a Licence Allocation Exercise unless:

 (a) he or she has produced evidence of his or her identity on the day of the Exercise, as directed by the ACMA and to its satisfaction; and

 (b) the ACMA has given him or her a bidding number.

 (3) For the purposes of paragraph (2)(a), the ACMA may be satisfied that a person has produced evidence of his or her identity on the day of the Exercise if the person provides the ACMA with a passport or an Australian Driver’s Licence.

*Note*   The ACMA may take a copy of the document for its records.

22 Bidding

 (1) The person conducting a Licence Allocation Exercise may start the bidding at any amount that he or she thinks is appropriate.

 (2) If the bidding for a licence does not reach the reserve price for the licence, the Licence Allocation Exercise for that licence is terminated.

 (3) If a dispute arises during a Licence Allocation Exercise concerning:

 (a) a bid; or

 (b) a person’s entitlement to bid; or

 (c) the conduct of the Licence Allocation Exercise;

the person conducting the Licence Allocation Exercise must determine the dispute, and must then, as he or she thinks is appropriate:

 (d) continue the Licence Allocation Exercise; or

 (e) terminate the Licence Allocation Exercise; or

 (f) re-start the bidding at an amount that he or she thinks is appropriate.

 (4) A decision under subsection (3) of the person conducting a Licence Allocation Exercise is final.

 (5) If a Licence Allocation Exercise for a licence is terminated under this section, the ACMA is not obliged to continue the issue of the licence as stated in a notice published under subsection 8 (1) or (5).

*Note*   See section 36 regarding the re-offer of a licence for which a Licence Allocation Exercise has been terminated.

23 Telephone bidding

 (1) A registered applicant may apply to the ACMA to bid by telephone at a Licence Allocation Exercise.

 (2) An application under subsection (1) must be in writing and made no later than 5 business days before the commencement of the Licence Allocation Exercise.

 (3) If the ACMA allows a registered applicant to bid by telephone at a Licence Allocation Exercise, the ACMA must, before the Licence Allocation Exercise, issue to the registered applicant a password and a 4 digit identification number.

 (4) An applicant who is allowed to bid by telephone at a Licence Allocation Exercise must provide the password and 4 digit identification number to the ACMA immediately before the commencement of the auction to verify the applicant’s identity.

24 Form of Acknowledgment to be lodged

 Within 10 business days after becoming a successful applicant, the applicant or its authorised agent must lodge a completed and legible Form of Acknowledgment.

*Note*   A ***successful applicant*** is defined in subsection 6 (1).

25 Form of Acknowledgment not lodged

 If neither the successful applicant nor its authorised agent complies with section 24, the successful applicant ceases to be the successful applicant.

26 Payment of winning price

 (1) A successful applicant for a licence must pay the the winning price no later than 10 business days after the Licence Allocation Exercise for the licence was held.

 (2) If the successful applicant does not comply with subsection (1), the successful applicant ceases to be the successful applicant for the licence at the end of the tenth business day after the Licence Allocation Exercise was held.

 (3) However, the person is taken to have continued to be the successful applicant for the licence after the end of the tenth business day after the Licence Allocation Exercise was held if the ACMA extends the period for compliance with subsection (1) after that day.

27 Issue of licence

 Subject to section 34, if neither of the circumstances in section 37exists, the ACMA must issue the licence to the successful applicant as soon as reasonably practicable after the successful applicant pays the winning price for the licence.

*Note*   Under the *Radiocommunications (Transmitter Licence Tax) Act 1983* and the *Radiocommunications Taxes Collection Act 1983*, a tax is imposed on the issue of a transmitter licence and is payable by the holder of the licence.

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

28 Application of Part 5

 This Part applies if, at the closing date and time for applications for a licence included in a notice under subsection 8 (1) or (5), there is only one registered applicant for the licence.

29 Notice to successful applicant

 Before the end of 5 business days after the closing date for applications for a licence, the ACMA must give the successful applicant for the licence:

 (a) a notice setting out:

 (i) that the successful applicant is the only registered applicant for the licence; and

 (ii) the amount of the reserve price for the licence; and

 (iii) the account into which the reserve price must be paid; and

 (iv) the last day when the successful applicant may pay the reserve price and lodge a completed and legible Form of Acknowledgment; and

 (v) the last day when the successful applicant may withdraw its application; and

 (b) a Form of Acknowledgment for completion.

*Note*   A ***successful applicant*** is defined in subsection 6 (1).

30 Payment of reserve price and lodging a Form of Acknowledgment

 Unless a successful applicant withdraws its application in accordance with section 33, on or before the day notified under subparagraph 29 (a) (iv), the successful applicant must:

 (a) pay the reserve price for the licence; and

 (b) lodge a completed and legible Form of Acknowledgment.

31 Reserve price not paid or Form of Acknowledgment not lodged

 (1) If the successful applicant fails to comply with section 30 in relation to a licence, the successful applicant ceases to be the successful applicant for the licence.

 (2) However, the person is taken to have continued to be the successful applicant for the licence after the day notified under subparagraph 29 (a) (iv) if the ACMA:

 (a) extends the period for compliance with section 30 after that day; and

 (b) has not re-offered the licence in accordance with subsection 36 (4) before attempting to extend the period.

32 Issue of licence

 Subject to section 34, and if neither of the circumstances in section 37exists, the ACMA must issue the licence to the successful applicant as soon as reasonably practicable after the successful applicant has complied with section 30.

*Note*   Under the *Radiocommunications (Transmitter Licence Tax) Act 1983* and the *Radiocommunications Taxes Collection Act 1983*, a tax is imposed on the issue of a transmitter licence and is payable by the holder of the licence.

33 Withdrawal of application

 A registered applicant described in section 28 may withdraw its application for a licence by lodging a notice to that effect on or before the day notified under subparagraph 29 (a) (v).

Part 6 Miscellaneous

34 Termination of proposed issue of a licence

 The ACMA may terminate a proposed issue of a licence at any time before the licence is issued.

35 Refund of reserve price or winning price

 If the ACMA terminates a proposed issue of a licence, the ACMA must refund:

 (a) any part of the reserve price for the licence paid under section 30; and

 (b) any part of the winning price for the licence paid under subsection 26 (1).

36 New Licence Allocation Exercise and re-offer of licence

(1) If, at the closing date and time for applications for a licence included in a notice published under subsection 8 (1) or (5), there are no registered applicants for the licence, the ACMA may re-offer the licence for issue.

 (2) If a Licence Allocation Exercise (***the relevant Exercise***) is held for a licence, and:

 (a) the relevant Exercise is terminated; or

 (b) the successful applicant for the licence ceases to be the successful applicant; or

 (c) the licence is not issued to the successful applicant; or

 (d) the proposed issue of the licence is terminated;

the ACMA may hold a new Licence Allocation Exercise for the licence on the same day as the relevant Exercise, or may re-offer the licence for issue.

 (3) If, under subsection (2), a new Licence Allocation Exercise is to be held for the licence on the same day as the relevant Exercise:

 (a) the ACMA must announce publicly (at the place where the relevant Exercise was held) the time when, and the place where, the new Licence Allocation Exercise is to be held; and

 (b) Part 4 (other than sections 16, 17 and 18) applies to the new Licence Allocation Exercise; and

 (c) a registered applicant for the licence continues to be a registered applicant for the licence, and is not required to re-apply or pay another application fee; and

 (d) an authorised agent for the licence continues to be an authorised agent for the licence; and

 (e) the reserve price for the licence remains in force.

 (4) If Part 5 applies to the proposed issue of a licence included in a notice published under subsection 8 (1) or (5), and:

 (a) the successful applicant for the licence ceases to be the successful applicant; or

 (b) the licence is not issued to the successful applicant; or

 (c) the proposed issue of the licence is terminated;

the ACMA may re-offer the licence for issue.

 (5) If a licence is to be re-offered:

 (a) subject to paragraphs (b) and (c), sections 8, 13, 14 and 15 must be complied with as if the licence had not previously been offered; and

 (b) subject to subsection (6), a registered applicant for the licence continues to be a registered applicant for the licence, and is not required to re-apply or pay another application fee; and

 (c) subject to subsection (6), an authorised agent for the licence continues to be an authorised agent for the licence; and

 (d) the application fee and reserve price for the licence remain in force.

 (6) If a licence is to be re-offered because neither the successful applicant (***former successful applicant***) nor its authorised agents complied with section 24, subsection 26(1) or section 30:

 (a) the former successful applicant does not continue to be a registered applicant for the licence;

 (b) an authorised agent of the former successful applicant does not continue to be an authorised agent for that licence in relation to that applicant; and

 (c) the former successful applicant may not apply for the licence under section 13.

37 Licence not to be issued in certain circumstances

 The ACMA must not issue a licence to an applicant if:

 (a) the licence is inconsistent with the spectrum plan made under subsection 30 (1) of the Radiocommunications Act; or

 (b) the licence is inconsistent with a relevant frequency band plan.

38 Duration of a licence

 A licence has effect on and from the day it is issued, and ceases to have effect at the end of the period specified in the section 34 determination.

39 Extension of time

 (1) The ACMA may extend the period in which an applicant is required to do any thing required by this Determination, whether or not the period has expired.

 (2) If the day for doing any thing under this Determination is not a business day, the thing is to be done on the next business day following that day.

*Note*   A ***business day*** is defined in subsection 6 (1).

40 Notices

 (1) A notice to be given to an applicant by the ACMA is taken, for all purposes, to have been given to the applicant if it is given to a person specified by the applicant in its Form of Application as a contact person to whom notices may be given.

 (2) A notice must be in writing, and may be given by means of facsimile transmission or email.

41 Lodgment

 The ACMA must specify in writing the place where, and the manner in which, a form must be lodged.

*Note*   The ACMA may specify these matters in a written notice or other material supplied by the ACMA to a person.

42 Liability of person etc for failure to comply

This Determination does not affect any right of the ACMA to recover damages (including damages of an amount greater than the amount of the highest bid) from a successful applicant, or any other person, for:

 (a) a failure by the successful applicant, or its authorised agent, to comply with section 24 or 30; or

 (b) a failure by the successful applicant to pay the winning price for the licence as specified in subsection 26 (1).

43 ACMA may appoint agent

 The ACMA may at any time appoint, in writing, one or more persons as its agent or agents for any of the following purposes:

 (a) receiving applications;

 (b) conducting a Licence Allocation Exercise;

 (c) accepting and holding in trust, on behalf of the ACMA, the following payments:

 (i) application fees;

 (ii) the reserve price for a licence;

 (iii) the winning price for a licence.

44 Delegation

 The ACMA may delegate any or all of its powers and functions under this Determination (other than this power of delegation) to:

 (a) a member of the ACMA; or

 (b) an associate member of the ACMA; or

 (c) a member of the staff of the ACMA.