

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2025

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2025* (the **instrument**) under subsection 106(1) of the *Radiocommunications Act 1992* (the **Act**), and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Subsection 106(1) of the Act provides that the ACMA may determine, in writing, a price-based system for allocating and/or issuing specified transmitter licences. Subsection 106(18) of the Act provides that a determination made under subsection 106(1) of the Act is a legislative instrument.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose and operation of the instrument

The purpose of the instrument is to continue the established price-based system for the allocation of transmitter licences for low power open narrowcasting (**LPON**) services which are allocated in several rounds conducted regularly by the ACMA.

An ‘open narrowcasting service’ is a radio broadcasting service provided to a limited audience, providing content such as tourist and racing information or ethnic and religious programming, or to a limited location. Providers of open narrowcasting services do not require a service licence under the *Broadcasting Services Act 1992* (**BSA**), as a class licence made under section 117 of the BSA authorises the provision of the service. However, if they wish to use the broadcasting services bands to provide their services, they need to obtain a transmitter licence issued under the Act, which authorises them to transmit their services. The provision of an open narrowcasting service is ‘low power’ if the transmitter operates at a maximum effective radiated power that is not greater than one watt in a residential area, or not greater than 10 watts in a non-residential area.

On 20 December 2000, the then Minister for Communications, Information Technology and the Arts gave the Australian Communications Authority (the **ACA**) the *Australian Communications Authority (LPON Transmitter Licence Allocation) Direction No. 3 of 2000* (the **Allocation Direction**). The Allocation Direction requires the allocation or issue of transmitter licences for low power open narrowcasting services by the ACMA (excluding renewal of licences) to be by way of price-based allocation systems.¹

The ACMA has made the instrument because the *Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2015* (the **2015 instrument**) was due to sunset’ (that is, to be automatically repealed) on 1 October 2025 under Part 4 of Chapter 3 of the *Legislation Act 2003* (the **LA**). Following a review, informed by a public consultation process

¹ The ACMA succeeded the responsibilities of the ACA on 1 July 2005. Directions given to the ACA are taken to be given to the ACMA by virtue of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*.

described below, the ACMA formed the view that the 2015 instrument was operating effectively and efficiently and was a necessary and useful part of the legislative framework, and decided to remake the 2015 instrument. To preserve the effect of the 2015 instrument, the ACMA has revoked the 2015 instrument before its sunset date and remade it with minor changes. Those minor changes reflect current practices (e.g. electronic bill payment methods are facilitated instead of payment by bank cheque) and remove specific details such as banking details to make the instrument more flexible and less likely to become out of date.

The instrument commences on the day after the day it is registered on the Federal Register of Legislation.

Subsection 106(12A) of the Act provides that a price-based allocation system determined under subsection 106(1) may confer a power to make a decision of an administrative character on a person or the ACMA.

The instrument provides for the following administrative decisions:

- A decision to determine whether each proposed LPON service transmitter site and frequency nominated by an applicant is consistent with the planning model (section 16).
- A decision by the auctioneer to determine disputed bids (subsection 26(4)).
- A decision to terminate an advertised allocation (section 41).

The decision to determine whether a proposed LPON service transmitter site and frequency is consistent with the planning model is one that occurs early in the LPON allocation process in relation to the allocation of a finite resource where there may be competing applicants. It automatically follows from the happening of a set of circumstances within the context of a competitive auction, which leaves no room for merits review to sensibly operate. A review of the decision may lead to the proper operation of the LPON allocation process being unnecessarily frustrated or delayed.

The decision to determine disputed bids may occur during the LPON allocation process. The auctioneer would be an agent of the ACMA. This decision arises in relation to a price-based allocation of a finite resource (a lot representing operation of a transmitter on a frequency from a site), where there may be competing applicants. It is a decision that is procedural in nature, falling within the usual discretions allowed to a person conducting an auction, in order that the auction may be run fairly and efficiently. This decision is made in response to matters arising in ‘real-time’, during live, competitive auction processes, which does not easily lend itself to the process required for merits review. As such, merits review of this decision may lead to the proper operation of the LPON allocation process being unnecessarily frustrated or delayed, or else a circumstance where there would be no appropriate remedy available should the decision be overturned on review (e.g. if the LPON licence has already been issued).

The decision to terminate an advertised allocation is a discretionary decision on the part of the ACMA. The termination of an allocation may involve the starting up of a new allocation process and therefore a review of the decision may lead to the proper operation of the subsequent allocation process being unnecessarily frustrated or delayed. There may also be circumstances where there would be no appropriate remedy available should the decision be overturned on review (e.g. if the LPON licence has already been issued in the subsequent allocation process).

Not including merits review of any of the above decisions is consistent with the guidance given by the Administrative Review Council in its publication ‘What Decisions Should be Subject to Merits Review?’, which is available from the website of the Attorney-General’s Department (www.ag.gov.au). At [4.1] of that publication, the Council said that:

Decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met, are generally considered by the Council to be inappropriate for merits review.

As such, the ACMA has not included any merits review provisions in the instrument.

A provision-by-provision description of the instrument is set out in the notes at **Attachment A**.

The instrument is an instrument for the purposes of the LA. However, the instrument is not subject to disallowance (see paragraph 44(2)(b) of the LA and item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the **Regulation**)).

Unlike, for example, community broadcasting services, an open narrowcasting service may be provided on a for-profit basis. As such, a person may choose to participate in an allocation process under the instrument as part of a commercial venture. According to the explanatory statement for the Regulation and the explanatory memorandum to the Legislative Instruments Bill 2003, exposure of the instrument to disallowance could cause commercial delay or commercial uncertainty. Were the instrument to be disallowed, the ACMA would be prevented from making another instrument in substantially the same form for six months (section 48 of the LA). This could delay the allocation of an LPON licence that a person intended to apply for as part of a commercial venture. Were the instrument to be disallowed during the course of an allocation, in addition to that delay, there could be significant uncertainty on the rights of participants in the allocation as to their rights or interests in the relevant LPON licence.

The instrument is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Documents incorporated by reference

Subsection 314A(1) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act as in force at a particular time, or from time to time. Subsection 314A(2) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing as in force or existing at a particular time, or from time to time.

The instrument incorporates all or parts of the following Acts and legislative instruments, as in force from time to time, or otherwise refers to them:

- the *A New Tax System (Australian Business Number) Act 1999*;
- the Act
- the AIA;
- the *Corporations Act 2001*;
- the LA;
- the *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2025*;
- the *Radiocommunications Taxes Collection Act 1983*
- the *Radiocommunications (Transmitter Licence Tax) Act 1983*.

Each of these Acts and legislative instruments is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

A proposal for the remaking of the 2015 instrument was released for public consultation on 6 June 2025, together with a proposed draft instrument, for 4 weeks. Relevant stakeholders were notified about the consultation by ebulletin. The consultation closed on 4 July 2025. This provided an opportunity for stakeholders and members of the public to comment on the proposal.

The ACMA received one submission on the proposal from the Australian Narrowcast Radio Association which supported the remaking of the instrument with the proposed minor changes.

Other consultation

The ACMA consulted with the ACCC in accordance with subsections 106(11A) and 106(12) of the Act. The ACCC advised the ACMA that it had no substantive comments to offer on making the instrument.

The ACMA consulted with the Attorney-General's Department in relation to the absence of merits review provision for decisions made under the instrument. The Attorney-General's Department supported the conclusion that merits review was not appropriate due to the allocation being that of a finite resource, where the allocation to another party would be affected if the decision were overturned.

The ACMA therefore intends to make the instrument in the form consulted on.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The instrument is not subject to disallowance, and so no statement of compatibility with human rights is required. However, as a matter of better practice, the statement of compatibility with human rights set out below has been prepared.

Overview of the instrument

The instrument's purpose is to set out the price-based allocation system for the allocation of LPON licences. Made under section 106 of the Act, the instrument makes provision for how specified LPON licences will be allocated by a price-based method – an auction. The ACMA will auction LPON licences. Such auction rounds are conducted regularly, usually more than once per calendar year.

The instrument sets out in detail the procedures that will be used to allocate LPON 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 regarding, and the potential consequences of non-compliance with, the allocation process.

Human rights implications

The ACMA has assessed whether the instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Article 19 of the International Covenant on Civil and Political Rights provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage the freedom of expression or any other rights and freedoms. This is because the instrument sets out the conditions for registering for an allocation, the allocation process under which LPON licences are allocated, and the issue of LPON licences to successful applicants, along with miscellaneous matters.

The effect of the instrument is limited to the circumstances mentioned above, and does not prevent a person from:

- applying for, and being issued, an LPON licence or other kinds of licences under the Act; or
- operating a radiocommunications device under a class licence; or
- being authorised to operate radiocommunications devices under an apparatus licence or a spectrum licence.

Conclusion

The instrument is compatible with human rights because there is no restriction on the freedom of expression and as it does not raise any other human rights issues.

Notes to the *Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2025*

Part 1 Preliminary

Section 1 Name

This section provides for the instrument to be cited as the *Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2025*.

Section 2 Commencement

This section provides for the instrument to commence on the day after the day it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 106(1) of the Act.

Section 4 Repeal

This section provides that the 2015 instrument is repealed upon commencement of the instrument.

Section 5 Definitions

Section 5 defines a number of key terms used throughout the instrument.

Section 6 References to other instruments

This section provides that in the instrument, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that legislative instrument as in force from time to time; and
- a reference to another instrument or writing is a reference to that instrument or writing as in force or existing from time to time.

Part 2 Preparing for the allocation

Section 7 Publication of notice by the ACMA

This section requires the ACMA to publish a notice on its website about proposed allocations of LPON licences and prescribes the information which must be included in the notice. The ACMA has the discretion to include other information in the notice. If the information contained in the notice is, or later becomes, incorrect, the ACMA must publish another notice on its website giving the correct information.

Subsection 7(4) provides that if a notice is corrected, the ACMA must give the notice to existing applicants for transmitter licences within 2 business days and if an existing applicant wishes to alter their application as a result of such a correction, the ACMA must provide the applicant with a reasonable opportunity to do so.

Section 8 Entry fee, closing date, reserve price and auction deposit amount

This section provides that before publishing a notice under subsection 7(1), the ACMA must set out the amount of the entry fee of an application for a lot, the closing date for the application, the reserve price for a lot and the amount of the auction deposit for each lot.

Section 9 LPON Applicant Information Package

This section sets out the requirements for the information and documents that must be contained in the LPON Applicant Information Package. The LPON Applicant Information Package may also include additional information about the allocation.

Section 10 Approval of forms and documents

This section provides that the ACMA must, in writing, approve the application form, the Deed of Acknowledgment and the Nomination of Agent Form.

Part 3 Registering for an allocation

Section 11 Applications

Subsection 11(1) provides that a person who wants to register for a lot to obtain a transmitter licence must pay an entry fee for each application.

Subsection 11(2) provides that the person must give the ACMA the registration documents, which include a completed application form and a completed Deed of Acknowledgement, for each transmitter licence sought.

Subsection 11(3) provides that an entry fee for each application must accompany the registration documents and be paid in accordance with section 40.

Subsection 11(4) provides that the application form must specify the transmitter site and frequency nominated for the transmitter licence.

Section 12 Lodging of applications

This section provides that the registration documents must be lodged with the ACMA on or before the closing date. The ACMA must confirm receipt of these as soon as practicable, noting the applicant's name, address and ABN or ARBN if applicable.

Section 13 Register of applicants

Section 13 requires the ACMA to maintain a register of applicants. It sets out the details the register must keep of each applicant. The register may also include other information the ACMA considers necessary for running the allocation. Subsection 13(4) requires the ACMA to make any necessary changes to the register within 10 business days after the applicant notifies the ACMA of certain changes or the ACMA becomes aware that any information in the register is not correct.

Subsection 13(5) provides that the ACMA must ensure that details about the applicants are not disclosed until the allocation is finalised, unless otherwise authorised by law or by the instrument. Subsection 13(6) requires the ACMA to publish the name of each applicant and the lots for which they are eligible to bid on the ACMA website no later than 5 business days before the start of an auction.

Section 14 Registration of applicants

This section provides that the ACMA must only register an applicant if they fulfil certain eligibility requirements set out in this section. This includes lodging registration documents, paying the entry fee

and, if relevant, having nominated an authorised agent. It requires the ACMA to notify registered applicants of their registration in writing within 5 business days after the closing date.

Section 15 Nomination of agent

Subsection 15(1) provides that an applicant may nominate an individual to act as an agent for the allocation of transmitter licences for LPON services, in the form approved by the ACMA. The individual is authorised to bid, and do anything else necessary, on behalf of the applicant, at an auction for a lot nominated for the applicant.

Subsection 15(2) sets out when a nomination of agent is required to be given to the ACMA.

Subsection 15(3) provides that an applicant may nominate more than one authorised agent for the purposes of an allocation, and if they do so, a separate nomination must be given for each agent nominated.

Section 16 Initial assessment of potential transmitter licence for LPON service

This section provides that the ACMA must consider each LPON service transmitter site and frequency nominated by an applicant within 20 business days of the closing date and decide whether it is consistent with the planning model as if that applicant were the only applicant for that site and frequency.

Section 17 Determination of lots

This section provides that the ACMA will assign a lot number to applications when it decides they are consistent with the planning model. Where two or more applicants nominate transmitter sites and frequencies within the minimum geographic or frequency separation specified in the planning model, the ACMA may contact the applicants to invite them to vary the application in respect of transmitter site or frequency. If these applicants are not contacted or the applications are not varied, all such applicants will be assigned the same lot number.

Part 4 Allocation where there is more than one applicant for the lot

Section 18 Application of Part 4

This section provides that Part 4 applies if there is more than one applicant for a particular lot.

Section 19 Holding an auction

This section requires that an auction held for the allocation of lots by the ACMA must be held in accordance with the instrument.

Section 20 Appointment of an auctioneer

This section requires the ACMA to appoint a person as auctioneer to conduct the auction.

In conducting auctions for LPONs under a Determination made under subsection 106(1) of the Act, it has been a long-standing practice of the ACMA to appoint, as auctioneer, a member of the ACMA's staff holding a particular role. Generally, this has been a staff member within the team responsible for licence allocation, who is employed at the Executive Level 1 or Executive Level 2 level under the *Public Service Act 1999*. The ACMA expects to continue this policy for auctions conducted under the instrument.

Section 21 Eligibility of applicants to participate in an auction for a lot

This section provides that a registered applicant is eligible to participate in an auction only for a lot that includes the transmitter site and frequency nominated by the applicant in the applicant's registration documents.

Section 22 Notice to registered applicant

Subsection 22(1) requires that, within 25 business days after the closing date, the ACMA give each registered applicant who is eligible to participate in an auction for a particular lot both a Nomination of Agent Form to complete and a notice. It sets out what the notice should include.

Subsection 22(2) provides that the ACMA may change certain details in the notice relating to the number of applicants, starting time and date, and accessing the auction system or auction centre. If the ACMA does make any such change, the ACMA is required to inform all affected applicants of the change in writing as soon as practicable after making the change.

Subsection 22(3) states that the ACMA must not change the starting date of the auction to an earlier date.

Subsection 22(4) provides that if an auction deposit is not paid by a registered applicant by the date set out in the notice, the application for the lot will be taken to be withdrawn.

Section 23 Payment of auction deposit

This section provides that registered applicants intending to bid at an auction must pay an auction deposit for each lot they are eligible to bid for and intend to bid on. Only those who have paid the auction deposit are eligible to bid. The section refers to how the auction deposit will be determined, paid and when it must be paid. It provides that the auction deposit will be fully refundable if the applicant withdraws prior to the commencement of the auction or if the applicant is not the successful applicant for a particular lot. It also provides that the auction deposit is forfeited if the applicant becomes subject to section 35 for failure to comply with auction payment requirements.

Section 24 Confirmation of registration for auction

This section provides that the ACMA will, within 15 business days before the commencement of the auction, confirm in writing to each registered applicant the applicant's payment of the auction deposit for each lot, each person (if any) nominated by the applicant through a Nomination of Agent Form, the lot that the applicant is eligible to bid for, and information about alternative bid methods if the bidder is unable to make a bid using the auction system or at the auction centre.

Section 25 Bidder identification as registered bidder

This section requires that a registered applicant or authorised agent of a registered applicant who wishes to bid at the auction in person must register as a bidder.

Section 26 Bidding in an auction

This section provides that only a registered bidder may bid for a lot. The registered bidder may only bid if they are a registered applicant or authorised agent of the registered applicant, and the lot they bid for has been nominated by the registered applicant and an auction deposit has been paid. The auctioneer will invite bids and identify the registered bidder who makes the highest bid. If the highest bid made for a lot is at least equal to the reserve price, the registered applicant who made the bid or for whom the bid was made becomes the successful applicant. In the case of any dispute over the bid, the auctioneer is the sole arbiter and their decision is final.

Section 27 Close of auction

This section provides that the auction in relation to a particular lot is closed after the successful applicant has been determined by the auctioneer. The ACMA will notify each successful applicant for each lot of the balance of the bid price. The section requires the applicant to pay this balance within 10 business days after the date of the notice in accordance with section 40.

Section 28 Lot offered at auction but not allocated

This section states that if a lot is not allocated at the auction, applications for that lot cease to have effect. However, if a successful applicant is in default of its financial obligations to the ACMA and the lot is treated as unallocated, the ACMA may treat the registration documents lodged by an unsuccessful applicant as valid registration documents for any future allocations, provided the applicant consents.

Section 29 Refund of auction deposit to unsuccessful applicants

This section requires the ACMA to refund the auction deposits to all unsuccessful applicants for a lot as soon as practicable after an auction.

Part 5 Allocation of a lot if there is only one applicant

Section 30 Application of Part 5

This section provides that Part 5 applies if, at the closing date, there is only one registered applicant for a particular lot.

Section 31 Notice to registered applicant

Subsection 31(1) requires that, within 25 business days after the closing date, the ACMA must give the registered applicant for the particular lot a notice. The notice includes notifying the applicant that they are the successful applicant, the amount of the reserve price to be paid for the lot and the last day when the applicant may pay the reserve price or withdraw their application.

Subsection 31(2) provides that, within 10 business days after the date of the notice, the successful applicant must either: (a) pay the reserve price in accordance with section 40 or (b) advise the ACMA in writing that the application has been withdrawn.

Section 32 Default by successful applicant

This section provides that if the successful applicant fails to comply with paragraph 31(2)(a), the application ceases to have effect and the applicant is not entitled to obtain a transmitter licence in relation to that particular lot.

Part 6 Issue of a licence to a successful applicant

Section 33 Commencement and duration of licence

This section provides that the transmitter licence comes into force on the day specified in the licence, and remains in force for the period specified in the licence.

Section 34 Issue of licence to successful applicant

This section provides that the successful applicant shall be issued a transmitter licence if the successful applicant pays the balance of the bid price or pays the reserve price, as is relevant, and in accordance with section 40, and applies for the licence under section 99 of the Act within 10 business days after the date of a notice issued to the successful applicant.

Section 35 Liability for failure to comply with auction payment requirements

This section provides that if a successful applicant does not pay the balance of the bid price, in accordance with this instrument, the applicant ceases to be entitled to be allocated the lot and the related transmitted licence, the auction deposit is forfeited, the applicant is taken to be in default of its financial obligations to the ACMA, and the lot may be treated as unallocated. The total of the default amount payable to the ACMA is a debt due to the ACMA on behalf of the Commonwealth and is recoverable by the ACMA, from the successful applicant, in a court of competent jurisdiction.

Part 7 Miscellaneous

Section 36 ACMA not liable under the allocation

This section provides that none of the ACMA, the Commonwealth or the auctioneer are liable to pay damages or costs arising from an act or omission of any person in relation to the allocation procedures set out in the instrument.

The allocation of parts of the spectrum is likely to result in multiple sales of spectrum access assets. This section is intended to protect the public interest in relation to claims for damages or costs which may be brought in respect of the conduct of the allocation process. This section would not prevent a person from taking proceedings (including judicial review proceedings) or exclude the jurisdiction of any court. This section names both the ACMA and the Commonwealth as although the ACMA does not have a separate legal identity to the Commonwealth, proceedings may still be brought in the name of the ACMA.

This section also names the auctioneer, as the auctioneer is typically a member of ACMA staff, and it would not be reasonable for the auctioneer to be liable for damages or costs against their personal assets as a result of their good faith conduct of their duties as auctioneer.

Section 37 Information provided by applicant

This section provides that a document given to the ACMA for the purposes of the allocation procedures set out in the instrument becomes the property of the Commonwealth, represented by the ACMA. This does not apply to documents used to establish an individual's identity. The ACMA may use information provided by an applicant to perform its functions or exercise its powers under the instrument.

Section 38 Recovery of damages by the ACMA

This section provides that the instrument does not affect any right or remedy the ACMA has or may have against any person which arose or arises under the Deed of Acknowledgment, statute, common law, equity or otherwise.

Section 39 Giving of information by the ACMA

This section provides that before the ACMA issues a transmitter licence it may announce or publish a notice of the name of each person to whom a licence is to be issued and the highest final price bid or reserve price for the lots comprising the licences.

Section 40 Payment of monies due to the ACMA

This section applies to all amounts paid to the ACMA under the instrument, unless otherwise specified.

Subsection 40(2) provides that amounts must be paid in Australian currency.

Subsection 40(3) provides that the entry fee, auction deposit and balance of the bid price must be paid by the date specified in the instrument.

Subsection 40(4) requires that amounts be paid by an electronic transfer or an electronic bill payment method using details either published on the ACMA's website or notified by the ACMA to the payer, for the purposes of the section.

Subsection 40(5) provides that an amount is taken to be paid by a due date if the ACMA both receives evidence of the electronic payment on or before the due date and the amount is received no later than 3 business days after the due date; or the ACMA receives other evidence that the payer has taken all reasonable steps to pay the amount before the due date.

Subsection 40(6) provides that an amount due 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.

Subsection 40(7) provides that, subject to subsection 40(5), the ACMA must receive the payment on or before the due date otherwise the person's application ceases to have effect and the person is not entitled to take part in the allocation.

Section 41 Termination of advertised price-based allocation

This section provides that the ACMA may terminate an advertised allocation under the instrument at any time before a transmitter licence is issued if the ACMA considers it appropriate. If the ACMA terminates an advertised allocation, all successful applicants cease to be entitled to be issued a transmitter licence.

Section 42 Refund of payments made to the ACMA

Subsection 42(1) provides that payments made to the ACMA under this instrument are not refundable, subject to subsection 42(2) and section 29.

Subsection 42(2) requires, in the case of the termination of an allocation under section 41, that the ACMA must refund any entry fee, reserve price, auction deposit or balance of bid price paid by an applicant.

Section 43 Notices

This section provides that a notice given to an applicant by the ACMA is taken to have been given to the applicant if it is given to the applicant's authorised agent or their specified contact person. It specifies that notices must be in writing and may be given by email.