



# Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)

*Telecommunications Act 1997*

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The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under section 463 of the *Telecommunications Act 1997*.

Dated 11<sup>th</sup> May 2007

*Chris Chapman*  
[signed]  
Chair

*Marcus Bezzi*  
[signed]  
General Manager

Australian Communications and Media Authority

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## **Part 1 Introduction**

### **1.1 Name of Determination**

This Determination is the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2007 (No. 1)*.

### **1.2 Commencement**

This Determination commences on the day after it is registered.

### **1.3 Purpose and application of Determination**

- (1) This Determination sets out the procedures for allocating freephone and local rate numbers by a sealed bid auction process.
- (2) This Determination does not apply to:
  - (a) the allocation of a number for emergency purposes, as set out in section 3.75T of the Numbering Plan; or
  - (b) the allocation of a number within the meaning of the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*.

*Note* The allocation of freephone and local rate numbers generally is dealt with in the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*.

### **1.4 Interpretation**

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

*Act* means the *Telecommunications Act 1997*.

*allocation application form* means the document approved by ACMA under paragraph 1.6 (1) (b).

*auction* means an auction held by ACMA in accordance with this Determination to allocate a freephone or local rate number, and covers the period from the lodging of the first valid participation notice to:

- (a) the closing of the auction under subsection 2.9 (4); or
- (b) the closing of the bidding period.

*auction day* means a day fixed by ACMA under section 2.11 as a day when an auction will take place.

*auction manager* means:

- (a) a person appointed under section 1.7; or

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- (b) if:
- (i) a person was appointed as an auction manager (however described), before the commencement of this Determination, under a determination made under section 463 of the Act; and
  - (ii) that appointment has not been revoked;

that person.

**auction system** means the information technology system used by ACMA to facilitate the operation of the auction website.

**auction website** means the website containing Internet accessible information and services made available by ACMA to facilitate the auction process.

**bank transfer**, for a payment, means making the payment by electronic transfer.

**bidding period** means the period worked out in accordance with section 3.5.

**CSP** means a carriage service provider.

**declared FLRN** means a FLRN included in a declaration referred to in subsection 3.75D (1) of the Numbering Plan.

**electronically** means using guided and/or unguided electromagnetic energy, other than facsimile.

**eligible charity** means a charity that has been endorsed as an income tax exempt charitable entity under Subdivision 50-B of the *Income Tax Assessment Act 1997*.

**FLRN** means a freephone or local rate number within the meaning of the Numbering Plan.

**former successful bidder** means a bidder identified under:

- (a) subparagraph 4.3 (1) (b) (ii); or
- (b) paragraph 4.3 (3) (c); or
- (c) paragraph 4.4 (a).

**notification period** means the 10 working days after ACMA notifies on the auction website that it has received the first valid participation notice for a FLRN.

**Numbering Plan** means the *Telecommunications Numbering Plan 1997*.

**original eligible amount** means an amount bid by the first successful bidder at a particular auction.

**participation notice form** means the document approved by ACMA under paragraph 1.6 (1) (c).

**registration application form** means the document approved by ACMA under paragraph 1.6 (1) (a).

**registered charity** means an eligible charity:

- (a) registered under section 2.2; or

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- (b) registered under section 2.2 of the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2005 (No. 1)*; or
- (c) taken, by subsection 5.11 (1) of the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2005 (No. 1)*, to have been registered under section 2.2 of that Determination.

**registered CSP** means a CSP registered under section 3.44 of the Numbering Plan.

**registered owner** has the meaning given by section 6 of the *Trade Marks Act 1995*.

**registered trade mark** has the meaning given by section 6 of the *Trade Marks Act 1995*.

**rights of use** means the rights set out in section 3.75E of the Numbering Plan

**strategic**, for a FLRN for a charity, has the meaning given by section 1.5.

**subsequent successful bidder** means a bidder who becomes a successful bidder after a successful bidder has become a former successful bidder.

**successful bidder** has the meaning given by section 3.7.

**unique identifier** has the meaning given by section 2.1.

**valid application** has the meaning given by subsection 2.4 (1).

**valid participation notice** means a participation notice that:

- (a) is given in accordance with section 2.8; and
- (b) is not rejected under subsection 2.8 (5) or cancelled under subsection 2.8 (6).

**working day** means a day that is not a Saturday, a Sunday or a public holiday in Victoria.

*Note* The following terms, used in this Determination, are defined in section 7 of the Act:

- ACMA
- carriage service provider.

(2) In this Determination:

- (a) a reference to time is a reference to that time in Victoria; and
- (b) a reference to the time an act is done:
- (i) for an act done using the auction system, is the time that the auction system records the act as being done; and
  - (ii) in any other case, is the time ACMA records the act as being done; and
- (c) a reference to an amount of money is a reference to that amount in Australian currency.

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- (3) If an amount worked out in accordance with this Determination is not a whole number:
- (a) the number is to be rounded to the nearest whole number; and
  - (b) a number with 5 in the first decimal place is to be rounded up to the nearest whole number.

**1.5 Strategic FLRN**

- (1) A FLRN is *strategic* for an eligible charity if the FLRN forms a word that:
- (a) matches a word that is part of the name of the eligible charity; or
  - (b) matches a word within a recognised registered trade mark, or a recognised registered business name, of the eligible charity; or
  - (c) is a single acronym that comprises the initial letters of words within the name of the eligible charity, or words within a recognised registered trade mark or a recognised registered business name of the eligible charity; or

*Example* A single acronym would be 'ACMA', where ACMA stands for Australian Communications and Media Authority. 'ACMAACMA' would not be a single acronym.

- (d) reflects the objects of the eligible charity as described in its constituting documents; or
  - (e) matches a word within a common usage version of the eligible charity's name.
- (2) For subsection (1):
- (a) a registered trade mark is a recognised registered trade mark of an eligible charity if:
    - (i) at the time the eligible charity makes an application under section 2.3 for the rights of use in relation to the FLRN, the eligible charity is the registered owner of the trade mark; and
    - (ii) either:
      - (A) the eligible charity has been the registered owner of the trade mark for the period of 12 consecutive months immediately before the application; or
      - (B) the eligible charity has used the trade mark in relation to goods or services; and
  - (b) a registered business name is a recognised registered business name of an eligible charity if:
    - (i) at the time the eligible charity makes an application under section 2.3 for the rights of use in relation to the FRLN, the business name is registered in connection with the eligible charity; and

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- (ii) either:
  - (A) the business name has been registered in connection with the eligible charity for the period of 12 consecutive months immediately before the application; or
  - (B) the eligible charity has carried on business under the registered business name.

**1.6 Approval of forms**

- (1) ACMA must, in writing, approve the following documents:
  - (a) a registration application form;
  - (b) an allocation application form;
  - (c) a participation notice form.
- (2) ACMA may approve more than 1 form of a document.

**1.7 Auction manager**

ACMA may, in writing, appoint a person (the *auction manager*) to manage an auction.

**1.8 Ways in which ACMA gives information**

ACMA may give any information to a person under this Determination:

- (a) by placing the information on the auction website; or
- (b) by facsimile; or
- (c) electronically.

**1.9 Method of payment of monies to ACMA**

- (1) All payments to ACMA must be made in Australian currency.
- (2) Unless otherwise provided in this Determination, monies due to ACMA under this Determination must be paid by the date required by the relevant provision of this Determination.
- (3) If a payment is required to be made by a specific date, it is sufficient if, by that date:
  - (a) for a payment made by a cheque or cash:
    - (i) the applicant has delivered the amount of the payment to ACMA (by hand, post or other means); and
    - (ii) ACMA has received the cheque or cash; or
  - (b) for a payment made by BPay — ACMA has received the payment into an account nominated or made available for that purpose by ACMA or the Commonwealth; or

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- (c) for a payment made by another means notified by ACMA — ACMA has received the payment into an account nominated or made available for that purpose by ACMA or the Commonwealth.
- (4) For this Determination, a payment is not made to ACMA unless ACMA receives the full amount of the payment, net of:
  - (a) any bank fees or charges; and
  - (b) any Government duties or other imposts.

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**Part 2 Preparing for the auction****2.1 Unique identifiers and fees**

- (1) A unique identifier is:
  - (a) a username and password issued by ACMA; or
  - (b) an electronic certificate or signature issued by ACMA; or
  - (c) any other means of secure identification issued by ACMA for use by the recipient as a unique identifier.
- (2) ACMA may at any time revoke a unique identifier and re-issue or replace it.
- (3) If ACMA has not already done so under this Determination or the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*, ACMA must:
  - (a) allot each registered CSP a unique identifier; and
  - (b) give the CSP details of its unique identifier.
- (4) ACMA may set:
  - (a) the amount of the registration fee; and
  - (b) the amount of the application fee.
- (5) ACMA must publish these amounts on the auction website.

**2.2 Registration**

- (1) An eligible charity interested in obtaining the rights of use in relation to a declared FLRN may apply to ACMA to be registered.

*Note* ACMA may declare that specified FLRNs are only to be allocated by auction — see sections 3.39 and 3.75D of the Numbering Plan.
- (2) The application must be made electronically, using the registration application form and the auction website.
- (3) After the registration fee (if any) has been paid, and if ACMA has not already given the registered charity a unique identifier under this Determination or the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*, ACMA must give the registered charity a unique identifier.
- (4) A registered charity may change its contact details and password (if any).
- (5) A registered charity is entitled to access ACMA's auction website using its unique identifier.
- (6) If a registered charity wants to change the name in which it has applied for or been granted registration, the registered charity must make a new application for registration in the new name.

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**2.3 Allocation applications**

- (1) A registered charity that wants to obtain the rights of use in relation to a declared FLRN under this Determination must apply jointly to ACMA with a registered CSP for the FLRN to be allocated to the CSP.

*Note* This Determination does not apply to the allocation of declared FLRNs in emergency situations — see section 3.75T of the Numbering Plan.

- (2) The application may be for a specific declared FLRN or for several declared FLRNs.

*Note* An eligible charity may not hold more than one of each type of FLRN (ie 13, 1300 and 1800 numbers) for a period greater than 12 months — see section 3.75Q of the Numbering Plan.

- (3) Each FLRN in the application must be a strategic FLRN for that charity.
- (4) The application must:
- (a) be lodged by the CSP; and
  - (b) be made:
    - (i) electronically, using the allocation application form and the auction website; and
    - (ii) using the CSP's unique identifier and the charity's unique identifier.

*Note* Under the Numbering Plan, a FLRN must be applied for by a registered CSP and can only be allocated to a registered CSP.

- (5) ACMA may refuse the application if:
- (a) the charity is not, or is no longer, an eligible charity; or
  - (b) one of the FLRNs covered by the application is not a strategic FLRN for the charity; or
  - (c) the charity or the CSP has not complied with or agreed to any terms and conditions notified under section 5.2.
- (6) ACMA may cancel an application if ACMA is satisfied in all the circumstances that it is appropriate to do so.

**2.4 Valid applications**

- (1) An application becomes a ***valid application***:
- (a) if it was made in accordance with section 2.3; and
  - (b) after payment of the application fee (if required) is received by ACMA.
- (2) ACMA will issue the registered charity with a receipt that shows the date of the valid application and each number in the charity's valid application.
- (3) A valid application:
- (a) remains valid for 12 months from the date of the receipt (the ***application period***); and

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- (b) entitles the registered charity to start the auction process by giving ACMA a participation notice; and
  - (c) entitles the registered charity to bid in an auction.
- (4) A valid application ceases to be a valid application if:
- (a) the application period has ended; or
  - (b) the CSP withdraws the application under section 2.6; or
  - (c) the registered charity is not, or is no longer, an eligible charity.

**2.5 Changes during the application period**

If, during the application period, a registered charity wants to change the name in which it has made an application or the number for which it has made an application, the registered charity must make a new application under section 2.3 with a registered CSP.

**2.6 Withdrawing application**

A joint applicant who wishes to withdraw an application for a particular FLRN may, at any time before the relevant registered charity has given a participation notice for that FLRN, apply for a cancellation under subsection 2.3 (6).

**2.7 CSP ceases to be registered**

- (1) If a registered CSP who is a joint applicant ceases to be registered before the registered charity gives a participation notice or makes a bid:
  - (a) the application is no longer a valid application; and
  - (b) if the registered charity who was the joint applicant still wants to give a participation notice or bid, it must apply again under section 2.3 with a registered CSP.
- (2) If a registered CSP who is a joint applicant ceases to be registered after the registered charity has given a participation notice or made a bid for a FLRN in the application:
  - (a) the application continues to be a valid application; and
  - (b) the registered charity may make a bid in accordance with section 3.1.
- (3) However, if a registered charity is the successful bidder in the auction after bidding in accordance with subsection (2), the charity must obtain another registered CSP within 14 days of the close of the auction.
- (4) A failure to obtain another registered CSP within 14 days is a default by the bidder in accordance with Division 2 of Part 4.

**2.8 Participation notice**

- (1) An eligible charity with a valid application may give ACMA a participation notice for a FLRN listed in the application.

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- (2) A participation notice may be given at any time before the auction of the FLRN starts.
- (3) The participation notice must:
  - (a) state the FLRN the registered charity wants to obtain the rights of use for; and
  - (b) be lodged using the registered charity's unique identifier; and
  - (c) be given electronically, using the participation notice form and the auction website.
- (4) The registered charity must give a separate participation notice for each FLRN applied for.
- (5) A participation notice must be rejected if:
  - (a) the registered charity's application is no longer a valid application; or
  - (b) a participation notice has been given for the FLRN under the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*; or
  - (c) ACMA has directed registered CSPs that the FLRN is only available for application for administrative allocation.
- (6) At any time prior to the lodging of a further participation notice, and if ACMA is satisfied in the circumstances that it is appropriate to do so, ACMA may cancel the first valid participation notice for a FLRN.

*Note* First valid participation notices and further participations notices are referred to in section 2.9.

**2.9 Effect of participation notice**

- (1) The first valid participation notice given for a FLRN:
  - (a) allows the registered charity to take part in the auction for the FLRN listed in the notice; and
  - (b) starts the notification period; and
  - (c) constitutes a bid for the number at the reserve price, unless the registered charity makes a higher bid during the bidding period.

*Note* An eligible charity may bid even if it has not given a participation notice.

- (2) On receiving the first valid participation notice for a FLRN, ACMA will notify on the auction website the fact that the participation notice was given and the name of the eligible charity.
- (3) A registered charity with a valid allocation application may, at any time during the notification period, give its own participation notice for the FLRN to ACMA.
- (4) If no other participation notice for the FLRN is received in the notification period, the auction is deemed to be closed and the eligible charity that lodged the first valid participation notice is taken to be the successful bidder, at the reserve price, for the purposes of subsection 3.7 (2).

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- (5) If a further participation notice for the FLRN is received in the notification period, ACMA must set a day for the auction in accordance with section 2.11.
- (6) ACMA may notify on the auction website the names of eligible charities that have lodged participation notices.

**2.10 Reserve prices**

- (1) ACMA must from time to time set the reserve price for each declared FLRN to be auctioned under this Determination.

*Note* ACMA may also set reserve prices for FLRNs that are auctioned under the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)* — see section 2.13 of that determination.

- (2) The reserve price for a particular FLRN for an auction is the reserve price that was in place at the date when the first valid participation notice for the FLRN was lodged with ACMA in accordance with section 2.8.
- (3) A reserve price must be notified on the auction website at least 10 working days before the start of the period in which it applies.

**2.11 Auction days**

ACMA must:

- (a) fix a day as the auction day for a FLRN that is at least 15 working days after the first valid participation notice is given for the FLRN under subsection 2.10 (1); and
- (b) notify this on the auction website at least 10 working days before the auction day.

## **Part 3 Auctions**

### **3.1 Bidding**

- (1) An eligible charity with a valid application may make a bid for a FLRN listed in the application, whether or not it has given a participation notice.

*Note* A charity which gave the first valid participation notice may lodge a sealed bid.

- (2) A bid for a FLRN must:
  - (a) be made during the bidding period; and
  - (b) be made using the charity's unique identifier; and
  - (c) be for at least the reserve price of the FLRN.

*Note* The bidding period is defined in section 3.5.

- (3) A bid that does not comply with these requirements is of no effect.
- (4) All bids will be sealed bids, and must not be considered by ACMA until after the bidding period closes.
- (5) ACMA may notify on the auction website the names of eligible charities that have made bids.

### **3.2 How to take part in the auction**

All bidding at an auction must be done electronically using the auction website.

### **3.3 No withdrawal of bids**

A bidder may not withdraw its bid.

### **3.4 Revocation or suspension of registration or participation in auction**

- (1) ACMA may suspend a registered charity's registration or exclude a bidder from participating in an auction if:
  - (a) the registered charity has been the successful bidder at another auction; and
  - (b) is in default of the payment of the eligible amount.
- (2) ACMA may revoke a registered charity's registration or exclude a bidder from participating in an auction if the registered charity has made a false statement to ACMA within the meaning of subsection 136.1 (1) of the *Criminal Code*:
  - (a) in the registered charity's application for registration; or
  - (b) in the registered charity's joint application for allocation; or

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- (c) in the registered charity's participation notice; or
  - (d) in connection with an auction.
- (3) AMCA may revoke a person's registration as a registered charity or exclude a person from participating in an auction if ACMA is satisfied that the person is not, or is no longer, an eligible charity.
- (4) If ACMA is reasonably satisfied in all the circumstances that a person has engaged in, or is likely to engage in, conduct that is prejudicial to the efficient and fair operation of the auction process (including but not limited to disguising the person's true identity), ACMA may exclude that person from participation in any or all future auctions.
- (5) ACMA must tell the person the reason for the suspension, revocation or exclusion.

**3.5 Opening and closing of bidding period**

- (1) An auction starts and closes in accordance with subsections (2) and (3), although the auction may be resumed in accordance with subsection 3.6 (12).

*Note* Subsection 3.6 (12) refers to circumstances in which an auction is resumed if the details of a winning bid have been irretrievably lost because of a technical failure in the auction website.

- (2) The bidding period for a FLRN commences at 11 am and, unless the auction has been suspended or cancelled under section 3.6, closes at 4 pm on the auction day set by ACMA in accordance with section 2.11.
- (3) If an auction has been suspended and resumed under section 3.6, the bidding period closes at 4 pm on the day the auction is resumed.
- (4) ACMA must not accept any bids after the bidding period has closed.

**3.6 Suspension or cancellation of auction**

- (1) At any time prior to the closing of the bidding period, ACMA may suspend or cancel an auction:
- (a) if it has excluded or suspended a registered charity from participating in an auction; or
  - (b) if it has revoked a person's registration as an eligible charity; or
  - (c) because of a technical failure in the auction website or auction system; or
  - (d) because of an event beyond the control of ACMA; or
  - (e) to give ACMA time to investigate an irregularity in the auction; or
  - (f) if ACMA is satisfied that in the circumstances it is appropriate to do so.

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- (2) If an auction is suspended, ACMA may:
  - (a) resume the auction, subject to subsections (3), (4) and (5); or
  - (b) cancel the auction.
- (3) If:
  - (a) an auction is suspended due to the exclusion or suspension of a registered charity; and
  - (b) ACMA resumes the auction;  
the auction may resume at the point immediately prior to the excluded or suspended charity's first bid.
- (4) If an auction is suspended because of a technical failure in the auction website or auction system:
  - (a) ACMA may resume the auction when the technical failure is fixed; and
  - (b) if ACMA resumes the auction, the auction may continue from the last valid bid recorded in the auction system.
- (5) If ACMA resumes an auction under this section, the auction must not resume until at least one full working day has elapsed since ACMA has told all participants of the date and time when the auction or notification period is to resume.
- (6) If ACMA resumes a suspended auction and the highest bid at the close of the auction was made prior to the suspension, the registered charity that made that bid (the *provisional high-bidder*) has the option to either:
  - (a) confirm its bid; or
  - (b) apply to ACMA for a cancellation of the auction.
- (7) An application for cancellation of an auction under subsection (6) must be accompanied by written reasons for the request.
- (8) If the provisional high bidder applies for a cancellation of the auction and provides written reasons, ACMA may, after consideration of all the circumstances, cancel the auction.
- (9) If the auction is cancelled, ACMA may again make the FLRN available for allocation by auction.
- (10) Nothing in subsection (1) requires ACMA to consider whether it will exercise its power to suspend or cancel an auction.
- (11) In addition to subsection (1), if:
  - (a) ACMA is satisfied that the details of a winning bid in relation to an auction have been irretrievably lost because of a technical failure in the auction website or auction system; and
  - (b) the auction has closed in accordance with section 3.5;  
ACMA may resume the auction in accordance with subsection (12), or treat the auction as not having been held in accordance with subsection (13).

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*Note* ACMA will decide whether it can resume an auction as soon as practicable after being satisfied that the details of the winning bid have been irretrievably lost. However, the time that ACMA will need to identify any valid bids in relation to an auction, and to notify the bidders at the auction, will vary depending on the circumstances of that auction.

- (12) If ACMA is able to identify 1 or more valid bids in relation to an auction mentioned in subsection (11):
- (a) the auction is taken not to have closed in accordance with section 3.5; and
  - (b) ACMA must take the highest of the valid bids that ACMA can identify as the last valid bid, and resume the auction in accordance with subsections (4) to (9); and
  - (c) each bidder who bid at the auction after the highest of the valid bids that ACMA can identify is taken not to have made that bid for the FLRN; and
  - (d) the CSP who was the joint applicant with the highest bidder at the auction is taken not to be the successful applicant for the allocation of the FLRN; and
  - (e) the resumed auction closes in accordance with section 3.5; and
  - (f) ACMA must, as soon as practicable, notify each registered person in relation to the auction that:
    - (i) the details of the winning bid have been irretrievably lost; and
    - (ii) a valid bid has been identified; and
    - (iii) this subsection applies in relation to the FLRN.

*Note* The bidder who made the highest of the valid bids that ACMA can identify has the option of applying to ACMA to cancel the auction — see subsection (6).

- (13) If ACMA is unable to identify any valid bids in relation to an auction mentioned in subsection (11):
- (a) the auction is taken not to have been held; and
  - (b) each bidder who bid at the auction is taken not to have made a bid for the FLRN; and
  - (c) the CSP who was the joint applicant with the highest bidder at the auction is taken not to be the successful applicant for the allocation of the FLRN; and
  - (d) each participation notice given under section 2.8 in relation to the auction is taken to have no effect; and
  - (e) ACMA may make the FLRN available again for allocation by auction; and
  - (f) ACMA must, as soon as practicable, notify each registered person in relation to the auction that:
    - (i) the details of the winning bid have been irretrievably lost; and
    - (ii) no valid bid has been identified; and
    - (iii) this subsection applies in relation to the FLRN.

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**Section 3.7****3.7 Successful bidder**

- (1) After the bidding period has closed, ACMA will:
  - (a) open all bids received during the auction; and
  - (b) notify the highest bidder on the auction website.
- (2) Subject to subsections 3.6 (12) and (13):
  - (a) the bidder who is the highest bidder for the FLRN at the close of an auction is the successful bidder for the FLRN; and
  - (b) if there are 2 or more equal highest bids, the successful bidder is the bidder whose bid was received first by ACMA using the auction website.

*Note* Subsections 3.6 (12) and (13) refer to circumstances in which the details of a winning bid have been irretrievably lost because of a technical failure in the auction website.

**Section 4.1**

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## **Part 4 After the auction**

### **Division 1 The successful applicant**

#### **4.1 Successful applicant and eligible amount**

For the purposes of subsection 463 (6) of the Act, but subject to subsections 3.6 (12) and (13):

- (a) the CSP who was the joint applicant with the successful bidder at an auction of a FLRN is the successful applicant for the allocation of the FLRN; and
- (b) the amount of the highest bid in an auction for a FLRN is taken to be the eligible amount for the allocation of the FLRN.

*Note 1* Subsection 463 (6) of the Act requires the successful applicant for the allocation of a FLRN, and the eligible amount in relation to that FLRN, to be determined by reference to the results of the auction.

*Note 2* Subsections 3.6 (12) and (13) refer to circumstances in which the details of a winning bid have been irretrievably lost because of a technical failure in the auction website.

#### **4.2 Payment of eligible amount**

- (1) The successful bidder must pay the eligible amount to ACMA on behalf of the CSP within 30 days of the close of the auction.
- (2) The amount must be paid in accordance with section 1.9.

*Note* If the successful bidder does not pay the eligible amount to ACMA within the 30 days, Division 2 will apply.

### **Division 2 Successful bidder with unpaid eligible amount or without a registered CSP**

#### **4.3 Successful bidder with unpaid eligible amount**

- (1) If the successful bidder does not pay the eligible amount within 30 days of the close of the auction (the *first period*), the bidder is entitled to a further 30 days (making a total period of 60 days after the close of the auction) to pay the eligible amount, unless ACMA:
  - (a) is satisfied that it would not be appropriate in the circumstances for the bidder to be entitled to the further 30 days; and
  - (b) as soon as practicable after the end of the first period:
    - (i) allows the bidder a further period after the end of the first period, specified by ACMA (but not more than 29 days), to pay the eligible amount; or

**Section 4.3**

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- (ii) decides to treat the bidder as having ceased to be the successful bidder, and as having become the *former successful bidder*, at the end of the first period.

*Note* If the successful bidder does not pay the eligible amount within the first period, ACMA's preference is for the successful bidder to have a further period of 30 days. However, there may be circumstances in which:

- (a) ACMA considers that a shorter period is appropriate; or
  - (b) ACMA is not satisfied that the bidder could pay the eligible amount within any further period; or
  - (c) ACMA is otherwise satisfied that its dealings with the bidder should be terminated.
- (2) The further period of 30 days, or the further period mentioned in subparagraph (1) (b) (i), is the *further period*.
- (3) If a further period applies:
- (a) the bidder must pay the eligible amount to ACMA on behalf of the CSP within the further period; and
  - (b) the amount must be paid in accordance with section 1.9; and
  - (c) if the successful bidder does not pay the eligible amount within the further period — the bidder ceases to be the successful bidder at the end of the further period and becomes the *former successful bidder*.
- (4) If the bidder becomes the former successful bidder:
- (a) the bidder will not be entitled to the rights of use in relation to the FLRN as a result of the completed auction; and
  - (b) the bidder's CSP will not be entitled to the allocation of the FLRN as a result of the completed auction; and
  - (c) the FLRN will be regarded as a defaulted FLRN, and the bidder will be taken to be in default of its financial obligations to ACMA under this Determination.

*Example 1*

Bidder A wins a number at auction but fails to pay within 30 days of the auction due to genuine error. ACMA does not set a further period or treat Bidder A as having ceased to be the successful bidder.

ACMA receives the winning bid amount on the 60th day after the close of the auction.

ACMA will treat the winning bid amount as having been paid within time and the entitlements under section 4.9 will accrue to Bidder A and Bidder A's CSP.

*Example 2*

Bidder A wins a number at auction but fails to pay within 30 days of the auction due to genuine error. On the 31st day, ACMA allows the bidder a further 10 days from the date of its decision to pay the eligible amount.

ACMA receives the winning bid amount on the 41st day after the close of the auction.

ACMA will treat the winning bid amount as having been paid within time and the entitlements under section 4.9 will accrue to Bidder A and Bidder A's CSP.

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### *Example 3*

Bidder A wins a number at auction but fails to pay within 30 days of the auction. On the 32nd day, ACMA decides to treat the bidder as having ceased to be the successful bidder.

Bidder A and its CSP will not be eligible for the entitlements granted under section 4.9. ACMA may decide to re-auction the number, allocate the number in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan or allocate the number under section 3.75T of the Numbering Plan.

*Note* Subject to section 3.4, if a successful bidder does not pay the eligible amount within the further period, and the FLRN is re-auctioned, the former successful bidder is eligible to bid for the FLRN again at that auction.

## 4.4 Successful bidder without a registered CSP

If the successful bidder for a FLRN does not obtain another registered CSP as required by subsection 2.7 (3):

- (a) the bidder ceases to be the successful bidder and becomes the *former successful bidder*; and
- (b) the bidder is not entitled to the rights of use in relation to the FLRN as a result of the completed auction; and
- (c) the bidder's CSP is not entitled to the allocation of the FLRN as a result of the completed auction; and
- (d) the FLRN will be regarded as a defaulted FLRN, and the bidder will be taken to be in default of its financial obligations to ACMA under this Determination.

*Note* If a successful bidder does not obtain another registered CSP, and the FLRN is re-auctioned, the former successful bidder is eligible to bid for the FLRN again at that auction.

## Division 3 Consequences of ceasing to be successful bidder

### 4.5 Defaulted FLRN

- (1) If a FLRN becomes a defaulted FLRN under paragraph 4.3 (4) (c) or 4.4 (d), ACMA may:
  - (a) make the FLRN available by holding a new auction (a *subsequent auction*) in accordance with this Determination or the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*; or
  - (b) make the number available for allocation in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan; or
  - (c) allocate the FLRN in accordance with an allocation under section 3.75T of the Numbering Plan.
- (2) ACMA is not required to take action under subsection (1) within any particular period after the FLRN becomes a defaulted FLRN.

- (3) For the purposes of subsection 463 (6) of the Act, if ACMA allocates a defaulted FLRN in accordance with paragraph (1) (a), the amount of the highest bid in the subsequent auction is taken to be the eligible amount in relation to the allocation of the FLRN.

*Note* Subsection 463 (6) of the Act requires the eligible amount in relation to the allocation of a FLRN to be determined by reference to the results of the auction.

#### **4.6 Recovery of unpaid eligible amount**

- (1) Any eligible amount that has not been paid by a bidder is a debt due to the Commonwealth, and is recoverable by ACMA from the bidder in any court of competent jurisdiction, whether or not another eligible amount has been identified in accordance with subsection 4.3 (4).

- (2) However:

- (a) if an eligible amount is paid for the defaulted FLRN in accordance with a subsequent auction; or  
(b) an amount is paid for an allocation of the defaulted FLRN in accordance with Division 5, 6 or 7 of the Numbering Plan;

the amount of the former successful bidder's debt in relation to the defaulted FLRN must be reduced by the total of the amounts paid by any subsequent successful bidder for the FLRN.

*Note* See paragraph 4.1 (b) and subsection 4.5 (3) for the eligible amount.

- (3) For subsection (2), if the total of the amounts paid by a subsequent successful bidder is greater than the amount of the former successful bidder's debt, the amount of the former successful bidder's debt is taken to be reduced to zero.

##### *Example 1*

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1) (a). At the subsequent auction, Bidder B wins the auction with a high bid of \$7 500 and pays the amount within time.

Bidder A's debt to the Commonwealth is reduced by the \$7 500 paid by Bidder B. Bidder A therefore owes the Commonwealth \$2 500.

##### *Example 2*

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1) (a). At the subsequent auction, Bidder B wins the auction with a high bid of \$12 500 and pays the amount within time.

Because the amount received from Bidder B is more than Bidder A's debt, Bidder A's debt is reduced to zero.

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### 4.7 Refund to former successful bidder

- (1) If a former successful bidder pays the original eligible amount, ACMA must pay an amount to the former successful bidder as soon as practicable.

*Note* A successful bidder who pays an eligible amount, but:

- (a) did not pay it by the end of the appropriate payment period; or
- (b) does not have a registered CSP in accordance with this Determination;

ceases to be the successful bidder, becomes a former successful bidder, and does not receive the rights of use in relation to the FLRN. See paragraphs 4.3 (1) (b), 4.3 (3) (c) and 4.4 (a).

- (2) The amount is the lesser of:

- (a) either:
  - (i) the eligible amount paid by a subsequent successful bidder for the defaulted FLRN in accordance with a subsequent auction; or
  - (ii) an amount paid for the allocation of the defaulted FLRN in accordance with Division 5, 6 or 7 of Part 5 of the Numbering Plan; and
- (b) the original eligible amount paid by the former successful bidder.

*Example 1*

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1) (a). Prior to the subsequent auction, Bidder A pays \$10 000. However, the \$10 000 has been paid out of time, so Bidder A remains the former successful bidder.

At the subsequent auction, Bidder B wins the auction with a high bid of \$7 500 and pays the amount.

The lesser of the original \$10 000 paid out of time and the \$7 500 paid as the result of the subsequent auction is \$7 500. ACMA refunds \$7 500 to Bidder A.

*Example 2*

Bidder A wins a number at auction for \$10 000. Bidder A does not pay within the required time. As a result, Bidder A becomes the former successful bidder. Bidder A therefore has a debt to the Commonwealth of \$10 000.

ACMA decides to re-auction the number pursuant to paragraph 4.5 (1) (a). Prior to the subsequent auction, Bidder A pays \$10 000. However, the \$10 000 has been paid out of time, so Bidder A remains the former successful bidder.

At the subsequent auction, Bidder B wins the auction with a high bid of \$12 500 and pays the amount.

The lesser of the original \$10 000 paid out of time and the \$12 500 paid as the result of the subsequent auction is \$12 500. ACMA refunds \$10 000 to Bidder A.

### 4.8 Status of former successful bidder

Unless section 3.4 applies, a bidder who becomes a former successful bidder is not prevented from:

- (a) participating in any subsequent auction under this Determination or the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*; or

- (b) being allocated a FLRN in accordance with Division 5, 6 or 7 of the Numbering Plan; or
- (c) being allocated a FLRN in accordance with an allocation under section 3.75T of the Numbering Plan.

## **Division 4                      Entitlements after payment of eligible amount**

### **4.9                      Entitlements**

If the eligible amount has been paid to ACMA in accordance with subsection 4.2 (1) or 4.3 (3):

- (a) the registered CSP who was the joint applicant with the successful bidder, or who has been obtained by the successful bidder pursuant to subsection 2.7 (3), must be allocated the FLRN in accordance with section 3.75E of the Numbering Plan; and
- (b) the successful bidder has the right to be issued the FLRN in accordance with section 3.75G of the Numbering Plan; and
- (c) the CSP has the right to have the FLRN surrendered if the CSP indicated in the application that the CSP wanted the FLRN to be surrendered; and
- (d) the successful bidder acquires the rights of use in accordance with section 3.75E of the Numbering Plan.

*Note 1* Sections 3.75A to 3.75T of the Numbering Plan deal with the allocation, issue and surrender of FLRNs.

*Note 2* As well as the rights of use attached to all FLRNs, the additional rights of use attached to auctioned FLRNs are set out in section 3.75E of the Numbering Plan.

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## **Part 5                      Miscellaneous**

### **Division 1                Arrangements relating to auction process**

#### **5.1                      Review of decisions by Administrative Appeals Tribunal**

- (1) Application may be made to the Administrative Appeals Tribunal for review of the following decisions:
  - (a) a decision of ACMA to refuse an allocation application under subsection 2.3 (5);
  - (b) a decision of ACMA to cancel an allocation application under subsection 2.3 (6);
  - (c) a decision of ACMA to revoke or suspend a registered charity's registration or exclude a bidder from participating in an auction under section 3.4;
  - (d) a decision made by ACMA to cancel or suspend an auction under section 3.6;
  - (e) a decision by ACMA under subparagraph 4.3 (1) (b) (i):
    - (i) to specify a particular further period in which a successful bidder must pay the eligible amount; or
    - (ii) to treat a bidder as having ceased to be the successful bidder.
- (2) If ACMA makes a decision mentioned in subsection (1), ACMA must give notice electronically of the decision to a person whose interests it affects.
- (3) The notice must include a statement to the effect that:
  - (a) subject to the *Administrative Appeals Tribunal Act 1975*, a person dissatisfied with the decision may apply to the Tribunal for a review of the decision; and
  - (b) the person may request a statement under section 28 of that Act in relation to the decision.

#### **5.2                      Terms and conditions of use**

- (1) Subject to subsection (3), ACMA may notify on the auction website terms and conditions related to:
  - (a) use of the auction website; and
  - (b) registration; and
  - (c) application; and
  - (d) participation in the auction process; and
  - (e) the payment of monies; and
  - (f) the publication of the information set out in section 5.6; and
  - (g) the use of numbers allocated as the result of the auction process; and

- (h) any other matter that ACMA considers appropriate for the operation of the auction system.
- (2) ACMA may require persons to agree to any such terms and conditions prior to use of the auction website or the registration or application processes.
- (3) The terms and conditions notified under subsection (1) must not be inconsistent with any provision in:
  - (a) this Determination; or
  - (b) the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)*; or
  - (c) the Numbering Plan.

### **5.3 Liability of ACMA**

ACMA is not liable to pay damages or costs arising from an act or omission of any person in relation to the auction process set out in this Determination.

### **5.4 Recovery of damages by ACMA**

This Determination is without prejudice to any right of action or remedy which ACMA has or may have against any person which arose or arises under statute, common law, equity or otherwise.

### **5.5 ACMA may obtain information from applicants**

- (1) This section applies to an applicant if ACMA has reason to believe that the applicant has information or documents that are relevant to the performance of any of ACMA's functions under this Determination.
- (2) ACMA may, by written notice to an applicant, require the applicant to give ACMA that information and those documents, within the period and in the manner and form specified in the notice.
- (3) An applicant must comply with a requirement under subsection (2).

### **5.6 ACMA may publish or release information**

- (1) ACMA may publish or release information about the auction process on the auction website or elsewhere.
- (2) The information that may be published or released includes, but is not limited to:
  - (a) the personal details of any person participating in the auction process, including registered charities, applicants and bidders; and
  - (b) the amount of any bid; and
  - (c) the time any bid is placed; and
  - (d) the time and manner of payment of the eligible amount.

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**Division 2                      Transitional and savings provisions**

**5.7                      Definition for Division 2**

In this Division:

*commencement day* means the day on which this Determination commences.

**5.8                      Revocation of *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2005 (No. 1)***

The *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2005 (No. 1)* is revoked.

**5.9                      Transitional — participation notice given before commencement day**

Despite the revocation of the *Telecommunications (Freephone and Local Rate Numbers — Charities) Allocation Determination 2005 (No. 1)* (the *revoked Determination*) by section 5.8 of this Determination, if:

- (a) a valid participation notice was given for a FLRN before the commencement day; and
- (b) the notice was not cancelled before the commencement day; and
- (c) the notice does not cease to be a valid participation notice after the commencement day;

the revoked Determination, as in force immediately before the commencement day, continues to apply in relation to the FLRN, including in relation to any auction of the FLRN and any arrangements relating to the auction process (whether those arrangements apply before, during or after the auction process).