

EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority

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

Telecommunications Act 1997

STATUTORY BASIS

Under section 463 of the *Telecommunications Act 1997* (the Act), the Australian Communications and Media Authority (ACMA) may, by written instrument, determine an allocation system for allocating specified numbers to carriage service providers (CSPs).

Subsection 463(6) of the Act requires that any such allocation system must provide for the successful applicant for a particular number, and the amount paid for the number, to be determined by reference to the results of a tender process, a public auction or another process.

The purpose of the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2007 (No. 1)* (the Public Determination) is to provide for an allocation system for allocating specified freephone and local rate numbers (FLRNs), through which the successful applicant for a particular number and the amount paid for the number, is determined through a public auction process.

BACKGROUND

Introduction

In 2004, the Australian Communications Authority (ACA) implemented a web-based system for allocating FLRNs and preferential access arrangements for charities.

Freephone numbers are 10-digit numbers beginning with 1800. Calls made to freephone numbers are free to end-users, as all associated call charges are borne by the recipient of the call.

Local rate numbers are 10-digit numbers beginning with 1300, or six-digit numbers beginning with 13. The charges for calls made to local rate numbers are shared between the person who makes the call (to a maximum of the amount chargeable for a local call) and the recipient of the call (who pays the remaining charge). (The call charge costs for local rate numbers may be higher from mobile phones or pay phones.)

FLRNs may be highly valued as marketing tools, especially in cases where a number is memorable by virtue of a repeating pattern of digits or corresponds to a meaningful 'phoneword', which is derived from the alphabetical keypad translation of the number. In addition, FLRNs may encourage calls through the reduced or free call cost.

Under section 455 of the Act, ACMA is required to create a numbering plan which, among other things, may set rules relating to the allocation of numbers. Under the *Telecommunications Numbering Plan 1997* (Numbering Plan), numbers are allocated to carriage service providers (CSPs) who then issue the numbers to customers.

Allocation arrangements

In 2003 and 2004, the ACA made two determinations. The first set out the arrangements for allocating FLRNs by public auction. The second set out the arrangements for allocating FLRNs by single sealed bid auction for eligible charities. Since the implementation of these arrangements, ACA and, later, ACMA have made a number of minor amendments to the determinations to improve the operational efficiency of allocating FLRNs by auction.

In 2006, ACMA proposed some further changes to be made to the determination. They include a provision of a cooling-off period for clients that submit a valid participation notice for a public auction and the clarification of strategic link requirements for applications from charities. ACMA also proposed to make some minor editorial changes, such as change references from “ACA” to “ACMA”. Rather than amend the existing determinations, ACMA decided to revoke them and, in their place, make:

- the Public Determination, which sets out the public auction process to allocate FLRNs (the subject of this Explanatory Statement); and
- the *Telecommunications (Freephone and Local Rate Numbers – Charities) Determination 2007 (No.1)* (the Charities Determination), which sets out the single, sealed bid auction process to allocate FLRNs to ‘eligible charities’.

The purpose of the separate arrangements for charitable organisations (namely, those organisations endorsed as an income tax exempt charitable entity under Subdivision 50-B of the *Income Tax Assessment Act 1997*) is to address the potential inequities associated with a market-based allocation system in which charitable organisations, as non-commercial entities, would be forced to compete for numbers on a financial basis with commercial entities.

Key elements of the public auction process

Under the public auction process a person will first need to register as a user of ACMA’s auction website. Having registered, the person must jointly apply with a registered CSP to ACMA (or its delegate) for the specific number it seeks. Joint application is necessary because, under section 463 of the Act, a number may only be allocated to a CSP that has applied for the number. The Act does not provide for a number to be issued directly by ACMA to an end-user of the number; it requires that a number be issued to the end-user via allocation to a CSP.

However, a joint application is not required where the person interested in a specific number is a registered CSP. In this instance, the application would be lodged by the registered CSP as user.

Any person with a valid application for a specific number would be able to give a 'participation notice' to trigger the scheduling of an auction day for the number and set the opening bid (which may be the amount of the reserve price set by ACMA, or greater). An auction for the number would then take place on the scheduled auction day and any person with a valid application for the number would be able to bid for the number. A person who submits a valid participation notice may withdraw or cancel it prior to the scheduled auction. The withdrawal must occur 10 days before the scheduled auction.

After the successful bidder has paid the amount of the winning bid, the CSP who was the joint applicant with the successful bidder is allocated the number, and the successful bidder is entitled to be issued the number and obtains the rights of use in relation to the number. The rights of use that will be conferred on a person who has been issued an auctioned number are set out in the Numbering Plan as varied by the *Telecommunications Numbering Plan Variation 2004 (No. 1)* and the *Telecommunications Numbering Plan Variation 2004 (No. 5)*.

Consultation

ACMA has undertaken substantial consultation regarding the latest changes about the withdrawal or cancellation of participation notices in public auctions.

ACMA has undertaken consultation with the Australian Competition and Consumer Commission (ACCC) and the general public, as required by section 464 of the Act. Consultation was also undertaken with the Numbering Advisory Committee (whose members include CSPs, Industry Number Management Services Ltd, business groups, consumer groups, industry associations and other government bodies) and the Australian Phone Words Association (APWA). The APWA represents businesses which are the largest purchasers and users of FLRNs.

Public consultation was conducted in accordance with section 464 of the Act, which requires a 30-day public consultation period. A notice was placed in the *The Australian* newspaper on 22 December 2006, inviting public comment by 5 February 2007. The draft Public Determination was also published on the ACMA website along with an information paper explaining the proposed amendment and identifying its impact.

The feedback received in stakeholder discussions supported the proposed amendment and no objections were received. APWA indicated it supported a cooling-off facility on 22 November 2006. The ACCC was consulted as required under section 463 of the Act and has advised by email on 16 March 2007 that it has no comment on this determination.

NOTES ON SECTIONS

Part 1 – Introduction

Section 1.1 – Name of determination

Section 1.1 provides that the name of the Public Determination is the *Telecommunications (Freephone and Local Rate Numbers) Determination 2007 (No. 1)*.

Section 1.2 – Commencement

Section 1.2 provides that the Public Determination commences on the day after it is registered.

Section 1.3 – Purpose and application of determination

Section 1.3 states the purpose of the Public Determination and the circumstances in which it does not apply.

This section provides that the purpose of the Public Determination is to set out the procedures for allocating FLRNs by an ascending bid auction process. It also provides that the determination does not apply to:

- the allocation of a number for emergency purposes as set out in section 3.75T of the Numbering Plan (section 3.75T of the Numbering Plan allows ACMA to temporarily allocate to a CSP a number that would otherwise be available for auction under the Public Determination or the Charities Determination in cases where the number is required as the result of an emergency situation); or
- the allocation of a number under the Charities Determination.

Section 1.4 – Interpretation

Section 1.4 defines words and expressions used in the Public Determination and provides that:

- electronically means using guided and/or unguided electromagnetic energy, other than facsimile;
- a reference to time is a reference to that time in Victoria;
- a reference to the time an act is done is either:
 - in the case of an action done using the information technology system used to facilitate the operation of the auction website, the time that the system records the act as being done; or
 - in any other case, the time ACMA records the act as being done; and
- a reference to an amount of money is a reference to that amount in Australian currency.

This section also provides that any non-whole number, and any number with a five in the first decimal place, that is worked out in accordance with the Public Determination is to be rounded up to the nearest whole number.

Section 1.5 – Approval of forms

Section 1.5 provides that ACMA must, in writing, approve a number of documents that will be required for use as part of the procedures set out in the Public Determination. The documents that ACMA is required to approve are:

- a registration application form (see section 2.2);
- an allocation application form (see section 2.3);
- a participation notice (see section 2.8); and
- a participation withdrawal form (see section 2.11).

This section also provides that ACMA may approve more than one version of each document.

Section 1.6 – Auction manager

Section 1.6 provides that ACMA may, in writing, appoint an ‘auction manager’ to manage an auction conducted under the Public Determination.

Section 1.7 – Ways in which ACMA gives information

Section 1.7 provides that ACMA may give any information in relation to any matter covered by the Public Determination:

- by placing the information on the auction website;
- by facsimile; or
- electronically.

In practice, it is anticipated that in most cases the information provided to auction participants by ACMA or its delegates will be provided via the auction website, often supplemented by email.

Section 1.8 – Method of payment of moneys to ACMA

Section 1.8 sets out rules regarding the payment of moneys that are due to ACMA under the determination.

Payments due to ACMA under the determination may be one or more of the following:

- a registration fee may be imposed under subsection 2.2(3)—if so, that fee must be paid by a person before they can be registered to participate in the auction process;
- an application fee may be imposed under subsection 2.4(1)—if so, that fee must be paid before an allocation application made by a CSP, jointly on behalf of the person who wishes to obtain the rights of use to a number, can be considered valid; or
- an amount imposed under subsection 4.2(1)—that is, the amount of the highest bid in an auction, which must be paid by the successful bidder within 30 days of the close of the auction.

This section states that all monies must be paid in Australian currency by the date required. The section also provides that if payment is due by a specific date, it is sufficient if, by that date:

- *For cheque or cash* – payment is received by ACMA by the specified date;
- *For BPay and other payments* – payment is received into ACMA’s bank account nominated by ACMA for that purpose; or
- *For additional payment methods notified on the auction website* – payment is received when the payment reaches the nominated account.

This section further states that a payment will not be taken to have been made to ACMA unless the full amount of the payment (allowing for any applicable bank fees or charges, and any Government duties or other imposts) is received by ACMA.

Part 2 – Preparing for the Auction

Section 2.1 – Unique identifiers and fees

Section 2.1 provides for ACMA to:

- issue and revoke ‘unique identifiers’ for use by registered CSPs and registered persons to access the auction website;
- set the amount of a registration fee (if any); and
- set the amount of an application fee (if any).

This section provides for a ‘unique identifier’ to be:

- a username and password issued by ACMA;
- an electronic certificate or signature issued by ACMA; or
- any other means of secure identification issued by ACMA.

This section states that the requirement for ACMA to give a registered CSP a unique identifier does not apply in cases where the CSP has previously been done so within the preferential allocation process for charities set out in the Charities Determination.

In practice, it is expected that:

- for registered persons, the unique identifier will be a username and password; and
- for registered CSPs, the unique identifier will be an electronic certificate.

This section also states that if ACMA has set the amount of the registration fee and/or the application fee, it must publish each amount on the auction website.

Section 2.2 – Registration

Section 2.2 provides for any person, including a CSP, who is interested in participating in the auction process to apply to ACMA to be registered. This section also sets out the requirements that apply to such applications and the entitlements of a person who has successfully registered.

A person who has successfully registered under section 2.2 is known as a ‘registered person.’ As a registered person, a person is able to access the auction website using a

unique identifier and proceed to the next stage in the auction process, which is to lodge a joint application.

This section states that a registration application must be made electronically, using a registration application form approved by ACMA under section 1.5 and the auction website.

This section also states that, once a person has made a registration application that meets the above requirements, the person will be given a unique identifier by ACMA, which the person may use to access the auction website (unless the person has previously been given a unique identifier under the preferential allocation arrangements for charities set out in the Charities Determination).

A new application for registration is required to be made by a registered person if that person wishes to change the name in which they have applied for or have been granted registration. This requirement ensures that registrants cannot change their name during the auction process, thereby enabling bidder identity to be as transparent as possible.

Section 2.3 – Allocation Applications

Section 2.3 provides for a registered person to apply, jointly with a registered CSP of their choice, for the CSP to be allocated a particular number or numbers. This section also sets out the requirements that apply to such applications and the arrangements by which a CSP may make an application in cases where the CSP wishes to obtain the rights of use to a number itself.

The requirement for registered users to make their allocation applications jointly with a registered CSP is necessary because, under subsection 463(6) of the Act, a number may only be allocated to a CSP that has applied for the number. That is, the Act does not provide for a number to be issued directly by ACMA to an end-user of the number.

Section 2.3 states that an allocation application must:

- be lodged by the CSP with whom the registered person is jointly making the application;
- be made electronically, using an application form approved by ACMA under section 1.5 and the auction website; and
- be made with reference to the CSP's unique identifier and the registered person's unique identifier.

This section also states that, in cases where a CSP wishes to obtain the rights of use to a number for itself:

- an allocation application made by a registered CSP need not be made jointly with another registered CSP (in which case, the CSP is effectively making the application as both a registered CSP and a registered person); but
- an allocation application made by an unregistered CSP must be made jointly with a registered CSP.

Under this section, ACMA has the discretion to cancel an application if it is satisfied that it is appropriate to do so. ACMA envisages that this discretion will generally be used where an application has been lodged in error (for example, an incorrect number) or where there has been a significant, unforeseen change in an applicant's circumstances (for example, serious illness).

Section 2.4 – Valid applications

Section 2.4 sets out the circumstances in which an allocation application made under section 2.3 is taken to be a 'valid application'. An allocation application is a valid application if:

- it was made in accordance with the requirements set out in section 2.3; and
- payment of any application fee set by ACMA under section 2.1 has been received by ACMA.

Section 2.4 also sets out ACMA's obligation to issue a receipt to the registered person showing the date of the application and each number in the valid application.

A registered person with a valid application is entitled to:

- use the valid application for a period of 12 months from the date of the receipt (the application period);
- initiate the auction process for any available number listed in the application by giving ACMA a participation notice under section 2.8, at any time within 12 months from the date of the valid application (as recorded on the receipt provided to the person by ACMA); and
- bid at auction for any number listed in the valid application.

This section states that an application is no longer valid if the 12 month application period has ended or the registered CSP with whom the application was jointly made withdraws the application under section 2.6, or the application is cancelled under subsection 2.3(7).

Section 2.5 – Changes during the application period

Section 2.5 sets out restrictions on the changes that a person may make to an application they have made under section 2.3.

Section 2.5 states that if, during the period in which an application is valid, the person in whose name the application was made wishes to change the name in which the application was made, or the number in respect of which they made the application, they will need to make a new application under section 2.3. A registered person may change their contact details and password (if any) under subsection 2.2(4).

Section 2.6 – Withdrawing application

Section 2.6 provides that a joint applicant may, at any time before the relevant registered person has given a participation notice for a particular FLRN, apply to ACMA for cancellation of the application under section 2.3(7).

Section 2.7 – CSP ceases to be registered

Section 2.7 sets out the rules that apply in cases where a registered CSP which is a party to a joint application ceases to be registered.

This section states that if the CSP ceases to be registered *before* the registered person who is the other party to the joint application has:

- given an operative participation notice; or
- made a bid at auction, in respect of a number listed in the application;

the application is no longer a valid application and the registered person must make another application under section 2.3.

This section also states that if the CSP ceases to be registered *after* the registered person has:

- given an operative participation notice; or
- made a bid at auction, in respect of a number listed in the application;

the application will continue to be a valid application and the person may continue to participate in the auction process. However, if the person subsequently wins the auction process, he or she must make arrangements for another registered CSP to be allocated the number on his or her behalf within 14 days of the close of the auction. A failure on the person's part to make such arrangements would constitute a default in accordance with Division 2 of Part 4, and the person would be subject to the consequences set out in that section.

Section 2.8 – Participation notice

Section 2.8 provides for a registered person with a valid application to give ACMA a participation notice for a number listed in the application. This section also sets out rules about:

- when a participation notice may be given;
- the items of information that must be included in a participation notice; and
- the means by which a participation notice must be given.

The primary function of a participation notice is to indicate that a person wishes for an auction day to be scheduled for a particular number. When a first participation notice is given for a number, the auction day for that number is scheduled in accordance with section 3.1. (The full effects of a participation notice are set out in section 2.12; see below.)

Section 2.8 states that a participation notice may be given at any time before the auction starts, as determined under subsection 3.2(1). It also states that a separate participation notice must be given for each number the person wishes to take to auction.

This section also states that a participation notice must:

- state the number that the person wishes to take to auction;
- if the person wishes for his or her first bid to be greater than the reserve price, state the amount of his or her first bid; and

- be given to ACMA electronically, using the form approved by ACMA under section 1.5 and the auction website.

Section 2.9 – Rejection of participation notice – the ‘first notice only’ rule

This section states that a participation notice (a later notice) must be rejected if another participation notice (the first notice) already exists for a number and it has not been rejected or withdrawn.

If a participation notice is rejected under this section, the publication of the first notice on ACMA’s website is taken to be sufficient notice for the purpose of this decision.

This section also states that if, after the later notice is rejected, the first notice is withdrawn this withdrawal will not revive the later notice after it has been rejected.

Section 2.10 – Rejection of participation notice – other reasons

This section states that a participation notice will be rejected if:

- the person’s application has ceased to be a valid application; or
- a participation notice has been given for the number under the preferential allocation process for charities (the procedures for the preferential allocation process for charities are set out in the Charities Determination); or
- it is for a number that ACMA has directed registered CSPs to be only available for application for administrative allocation.

If ACMA does reject the participation notice under this section, it will advise the registered person via the auction system.

Section 2.11 – Withdrawing a participation notice – cooling off period

This section provides for the withdrawal of a participation notice (or nomination) within a cooling-off period which is stipulated in subsection 2.11(5). A precondition is that the participation notice has not already been rejected under subsection 2.9(1) or 2.10(1).

It also states that a registered person may withdraw their participation notice within the cooling-off period. This period starts on the day the participation notice is given in accordance with section 2.8 and ends 10 working days before the *nominal auction day* for the FLRN listed in the notice.

The nominal auction day means the auction day worked out in accordance with subsection 3.1(1) for a participation notice if the nomination had not been withdrawn.

This section also states that the withdrawal of a participation notice must:

- be lodged electronically;
- be lodged using the registered person’s unique identifier;
- use the participation notice withdrawal form;
- use the auction website; and
- identify the FLRN listed in the participation notice that is being withdrawn.

If a person withdraws a participation notice, ACMA will notify the fact on its website.

2.12 – Effect of operative participation notice

Section 2.12 sets out the effects of a participation notice given by a person under section 2.8.

Because the primary function of a participation notice is to trigger the scheduling of an auction day for a number, only the first notice given for any one number has an effect. That is, after an auction day has been scheduled for the number as a result of the first notice, any subsequent notices are effectively redundant.

Any person who has a valid application for the number may still bid for the number at auction (whether or not that person lodged the participation notice for the number).

This section states that the operative participation notice for a number:

- entitles the person who gave the notice to bid for the number at auction;
- will trigger the scheduling of an auction day for the number on the date fixed under section 3.1; and
- will set the first bid for the number at auction (either at the reserve price, or, if the person has stated an amount in his or her participation notice that is greater than the reserve price, at that higher amount).

Section 2.13 – Reserve prices and increments

Section 2.13 provides for ACMA to periodically set the reserve price and minimum bid increment applicable to each number to be auctioned. This section also sets out rules about the way in which ACMA must set, and make known, these amounts.

This section states that:

- ACMA must periodically set the reserve price and minimum bid increment applicable to each number that is available for auction;
- once set by ACMA, the amounts must be notified on the auction website at least 10 working days before the start of the auction of the number; and
- the reserve price and minimum bid increment applicable to a number are those that had been set by ACMA and notified on the auction website at the date on which the operative participation notice was given for the number that will start the auction in accordance with section 2.12(b).

2.14 – Auction days

Section 2.14 provides for ACMA to periodically set auction days. It also sets out rules about how ACMA must make known the auction days it sets.

Numbers that are the subject of a operative participation notice (i.e. those numbers for which a person has expressed a wish to take to auction) will be auctioned in batches on pre-scheduled auction days.

This section states that ACMA must periodically:

- schedule a day as an auction day; and

- publicise the scheduled day on the auction website at least 10 working days before the scheduled day.

Section 2.15 – Auction limits

Section 2.15 provides for ACMA to periodically limit the quantity of numbers that may be auctioned on a particular day.

This section states that ACMA may periodically:

- limit the quantity of numbers that may be auctioned on a particular auction day; and
- publicise this limit on the auction website at least 10 working days before the auction day to which the limit will apply.

Part 3 – Auctions

Section 3.1 – Auction

Section 3.1 provides that the day on which a number is to be auctioned is the next auction day after the operative participation notice is given for the number under section 2.8. This section also sets a minimum period, after the notice is given, that must pass before an auction can occur and sets out the arrangements that apply in cases where the maximum quantity of numbers that may be auctioned on a particular auction day (as set under section 2.15) has already been reached.

This section states that if a person gives a participation notice for a number, the auction of the number will be held on the next auction day set by ACMA under section 2.14 that is at least 10 days after the date on which the notice was given. ACMA believes that a 10 day period is sufficient to provide people with reasonable time to make arrangements to bid for a number, without causing undue delay to those who are interested in having an auction occur as quickly as possible.

This section also states that, if the maximum quantity of numbers that may be auctioned on a particular auction day (as set under section 2.15) has already been reached, ACMA may:

- auction the number on the next auction day;
- decide on an alternative auction day for the remaining numbers; and
- publicise these decisions on the auction website at least three working days before the first auction day.

Section 3.2 – Period of auction

Section 3.2 sets out rules about when an auction starts and closes.

This section sets out that an auction will run for at least one day, and will commence at 11 am on the auction day determined under section 3.1. On that day, bidding will be open between the hours of 11 am and 4 pm. If a bid is made after 3 pm, the auction will end for the day at 4 pm and recommence at 11 am on the following working day (i.e. on ‘day two’).

If no bids are made between 11 am and 12 pm on day two, the auction will close at 12 pm on day two. If a bid is made between 11 am and 12 pm on day two, the auction will remain open until a full chronological hour passes without a bid being made (e.g. from 2 pm to 3 pm), and so on.

If, on day two, a bid is made after 3 pm, the auction ends for the day at 4 pm, and recommences at 11 am on the following working day. This cycle will continue until a winning bid is determined, at which time the auction will close.

Section 3.3 – How to take part in the auction

Section 3.3 provides that all bidding in an auction under the Public Determination must be conducted electronically using the auction website.

Section 3.4 – Bidding

Section 3.4 sets out the requirements that a bid must meet in order to have effect. It provides that a registered person with a valid application may make a bid for a number listed in the application, regardless of whether it has given a participation notice in respect of the number.

This section states that a starting bid must either be equal to the reserve price, or a higher amount specified by a person in their participation notice.

This section further states that all other bids must be made using the bidder's unique identifier, and be at least one minimum bid increment (as set under section 2.13) above the existing highest bid.

Section 3.4 states that a bid that does not meet the above requirements is of no effect.

Section 3.5 – Automatic re-bidding

Section 3.5 provides that ACMA may make provisions on the auction website for bidders to make automatic re-bids in auctions conducted under the Public Determination, and sets out requirements that must be met by any such provisions.

In an automatic re-bid process, a bidder specifies the maximum amount he or she is willing to bid for an item. Bids are then automatically made on the bidder's behalf, in accordance with any applicable bidding rules (such as minimum bid increments), up to, but not exceeding that maximum amount.

Section 3.5 states that if such a facility is available, a person who wishes to make automatic re-bids must inform ACMA of his or her wish to do so, and the maximum amount he or she is prepared to bid.

This section states that within any automatic re-bid provisions made by ACMA:

- a person who wishes to make automatic re-bids must inform ACMA of his or her wish to do so, and the maximum amount he or she is willing to bid;

- each automatic re-bid will be one minimum bid increment (as set under section 2.13) above the existing highest bid; and
- the automatic re-bids must cease if the amount of the next automatic bid would exceed the maximum amount that the bidder has advised ACMA he or she is willing to bid.

Section 3.6 – No withdrawal of bids

Section 3.6 provides that once a person has made a bid, he or she may not withdraw that bid.

Section 3.7 – Revocation or suspension of registration or participation in auction

Section 3.7 provides that ACMA may suspend a person’s registration and/or exclude them from participating in an auction if the person has been the successful bidder at another auction, but has not paid the amount of their successful bid in accordance with sections 4.2 and 4.3.

Under this section, ACMA may also *revoke* a person’s registration, and/or exclude them from participating in an auction if the person gives false or misleading information to ACMA:

- within their application for registration;
- within their application for allocation;
- within their participation notice; or
- in connection with an auction.

It is a serious offence to give false or misleading information under subsection 136(1) of the *Criminal Code*.

Section 3.7 also gives ACMA the power to exclude a registered person from participating in any or all future auctions where 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. This provision enables ACMA to take appropriate action where a registered person may have previously been engaged in unsatisfactory conduct, which could include, but is not limited to, disguising his or her true identity.

Section 3.7 states that if ACMA takes action under this section, it must inform the affected person of its reason for doing so. Under section 5.1, a person may seek review of a decision of ACMA by the Administrative Appeals Tribunal.

Section 3.8 – Suspension or cancellation of auction

Section 3.8 provides for ACMA to suspend or cancel an auction under certain circumstances. This section also sets out rules about the time at which a suspended auction will resume, and what happens to a number that was the subject of a cancelled auction.

This states that ACMA may suspend or cancel an auction:

- if it has excluded or suspended a person from participating in an auction under section 3.7;
- because of a technical failure in the auction website or the auction system; or
- because of an event beyond the control of ACMA;
- to give ACMA time to investigate an irregularity in the auction; or
- if it is satisfied that in the circumstances it is appropriate to do so.

This section states that in cases where an auction has been suspended, ACMA has the option to either resume or cancel the auction. If the auction is suspended:

- because of the exclusion or suspension of a person under section 3.7, the auction may resume at the point immediately prior to the excluded or suspended person's first bid;
- because of a technical failure in the auction website, the auction may resume:
 - when the technical failure is fixed; and
 - from the last valid bid recorded on the auction system;

If ACMA decides to resume an auction following a suspension, the auction may not resume until at least one full working day after ACMA has told all auction participants of the date and time when the auction is to resume.

This section also states that in the event that ACMA resumes an auction from the last valid bid, and no further bids are made, the person who made the last valid bid will be able to either:

- confirm their bid; or
- apply to ACMA for the auction to be cancelled, stating in writing, the reasons why this should happen — on receiving such an application, ACMA may, having given regard to relevant circumstances, then decide whether to cancel the auction.

This section states that if an auction is cancelled, ACMA may make the number that was being auctioned available again for allocation by auction.

This section does not require ACMA to consider whether it will exercise its power to suspend or cancel an auction.

Decisions made by ACMA under this section are reviewable by the Administrative Appeals Tribunal in accordance with section 5.1.

Subsections (11), (12) and (13) provide a mechanism for dealing with instances where the results of an auction have been irretrievably lost. Where the results have been lost, but valid bid data is available, the auction will re-start at the last known valid bid. Where there is no valid bid data available, the auction is taken not to have been held and the original participation notice is taken not to have been given. In these circumstances, the number will be made available again for auction.

Section 3.9 – Closing of an auction

Section 3.9 sets out rules by which to determine the time at which an auction is closed. This section also provides for the closure of an auction to be publicised on the auction website, and states the effect of the closure of an auction.

This section states that an auction closes at the time determined under subsections 3.2(2) or 3.2(6). The effect of these subsections is set out under section 3.2, above.

Under subsection 3.9(1), ACMA may close an auction at a particular time. Before doing so, ACMA must give two days' notification on the auction website of the closure.

Section 3.9 states that no bids will be accepted after the auction has closed.

Section 3.10 – Successful bidder

Section 3.10 provides that the person who is the highest bidder for a number at the close of an auction is the successful bidder for the number.

Under section 4.9, subject to payment of the amount of the successful bid within 30 days of the close of the auction or within a further period under section 4.3, the successful bidder for a number has the right to be issued the number and thereby obtain the rights of use to the number.

Part 4 – After the auction

Section 4.1 – Successful applicant and eligible amount

Section 4.1 sets out:

- who, for the purposes of subsection 463(6) of the Act, is taken to be the 'successful applicant for the allocation of a particular number' (the successful applicant); and
- the amount that, for the purposes of subsection 463(6) of the Act, is taken to be the 'eligible amount in relation to the allocation of that number' (the eligible amount).

Section 4.1 states that the CSP, who was the joint applicant with the successful bidder at the auction of a number, is the successful applicant for the allocation of that number.

Section 4.1 also states that the amount of the highest bid in the auction of a number is the eligible amount in relation to the allocation of that number.

Section 4.2 – Payment of eligible amount

Section 4.2 sets out the period within which a successful bidder must pay its eligible amount (i.e. the amount of its successful bid) to ACMA, and the arrangements by which payment must be made.

This section states that the successful bidder must pay the eligible amount to ACMA within 30 days of the close of the auction and the eligible amount must be paid in accordance with section 1.8, which sets out the method of payment of moneys to ACMA.

Section 4.2 also states the payment is made by the successful bidder on behalf of the CSP with whom they jointly applied for the number. This is because, under subsection 463(6) of the Act, the allocation of a number under the auction system is dependent on the payment of the eligible amount. Although under section 4.9 the successful bidder is assured of the right to be issued the number, for this to occur, the number must first be allocated to the CSP. It is therefore appropriate that the payment necessary for the allocation to occur is made by the successful bidder on the CSP's behalf.

Section 4.3 – Successful bidder with unpaid eligible amount

Section 4.3 provides that if the eligible amount is not paid within 30 days of the close of the auction, the successful bidder may be given up to an additional 30 days to pay the winning bid amount. ACMA has the discretion to reduce the number of additional days or treat the bidder as having ceased to be the successful bidder. In the latter case, the bidder would not be given any additional time to rectify the failure to pay. The rules in relation to the time at which an auction is taken to have closed are set out in section 3.9.

Section 4.3 also provides that a successful bidder ceases to be the successful bidder and becomes the *former successful bidder* if:

- the bidder does not pay the eligible amount within the first period of 30 days under section 4.2;
- the bidder does not pay the eligible amount within the further period allowed by ACMA under sub-paragraph 4.3(1)(b)(i); or
- ACMA has decided under sub-paragraph 4.3(1)(b)(ii) to treat the bidder as having ceased to be the successful bidder.

Subsection (4) sets out the following consequences that will apply if a successful bidder becomes the *former successful bidder* in relation to a particular FLRN:

- the *former successful bidder* will not be entitled to the rights of use in relation to the FLRN;
- the *former successful bidder's* CSP will not be entitled to the allocation of the FLRN;
- the FLRN becomes a defaulted FLRN; and
- the *former successful bidder* will be in default of its financial obligations to ACMA.

Section 4.4 – Successful bidder without a registered CSP

Section 4.4 states that if a successful bidder for a FLRN ceases to have a registered CSP and does not find another registered CSP within 14 days of the close of an auction as required by subsection 2.7(3), the bidder becomes the former successful bidder and the same consequences listed under subsection 4.3(4) apply to the bidder and the bidder's CSP.

Section 4.5 – Defaulted FLRN

Section 4.5 states that, if a FLRN becomes defaulted under sections 4.3 or 4.4 of the Public Determination, ACMA may re-auction the defaulted FLRN or allocate the FLRN under the Numbering Plan either by administrative allocation or by the emergency allocation provisions. This section does not apply any time limit within which ACMA must act.

This section also includes an administrative provision in relation to determining the eligible amount for a defaulted FLRN for the purposes of section 463 of the Act and the arrangements in sections 4.6 and 4.7 of the Public Determination. It states that if ACMA chooses to re-auction a defaulted FLRN, the eligible amount for that FLRN is the amount of the highest bid in the subsequent auction.

Section 4.6 – Recovery of eligible amount

Section 4.6 puts arrangements in place for the recovery of an eligible amount in relation to a defaulted FLRN. Section 4.6 states that any outstanding payment amount that has not been paid by a bidder in relation to a defaulted FLRN is a debt due to the Commonwealth that is recoverable by ACMA.

This section provides that the debt due to the Commonwealth will be reduced by the amount ACMA receives as a result of a subsequent auction for that FLRN or an allocation of that FLRN under the Numbering Plan (either by administrative or emergency allocation). If ACMA receives a payment from a subsequent successful bidder for an amount which is more than the initial winning bid, the debt to the Commonwealth in relation to the defaulted FLRN is zero.

Section 4.7 – Refund to former successful bidder

Section 4.7 deals with the situation where the successful bidder in relation to an FLRN becomes the former successful bidder and has paid the eligible amount to ACMA. This situation could arise if the successful bidder pays the eligible amount after the appropriate payment period or the bidder does not have a registered CSP in accordance with the Determination.

This section provides that the former successful bidder is entitled to a refund up to the original eligible amount. The amount will be equal to the amount ACMA receives from the subsequent successful bidder for the subsequent allocation of the FLRN (whether the number is re-auctioned or allocated under the Numbering Plan either by administrative or emergency allocation).

Section 4.8 – Status of former successful bidder

Section 4.8 provides that, unless ACMA has taken action under section 3.7, a former successful bidder is not prevented from participating in subsequent auctions under this or the charities determination or being allocated a FLRN under the administrative or emergency allocation arrangements of the Numbering Plan.

Section 4.9 – Entitlements

Section 4.9 sets out the entitlements of the successful bidder, and the CSP who was the joint applicant with the successful bidder, after the eligible amount (i.e. the amount of the successful bid) has been paid to ACMA.

This section states that, following payment of the eligible amount as required by subsection 4.2(1) or 4.3(3), the CSP has the right:

- to be allocated the number in accordance with section 3.75E of the Numbering Plan (this right also applies to a CSP who was obtained by the successful bidder pursuant to subsection 2.7(3)); and
- to have the number surrendered in cases where, in the application for the number, the CSP has indicated its intention for this to occur.

This section also states that, following payment of the eligible amount, the successful bidder has the right to be issued the number in accordance with section 3.75G of the Numbering Plan, and thereby acquire the rights of use in relation to the number in accordance with section 3.75E of the Numbering Plan.

Part 5 – Miscellaneous

Section 5.1 – Review of decisions

Section 5.1 provides that certain decisions made by ACMA may be reviewed by the Administrative Appeals Tribunal (AAT). This section also sets out the notification requirements that must be met by ACMA when such decisions have been made.

This section states that the following decisions may be subject to review by the AAT:

- a decision under subsection 2.3(7) by ACMA to cancel an application for allocation of a declared FLRN or several declared FLRNs;
- a decision under section 3.7 by ACMA to revoke or suspend a person's registration or to exclude a bidder from participating in an auction;
- a decision under subsection 3.8(1) by ACMA to suspend or cancel an auction; or
- a decision under subparagraph 4.3(1)(b)(i) to specify a particular further period for payment of the winning bid amount or to treat the bidder as having ceased to be a successful bidder.

This section further states that if ACMA makes a decision listed above, ACMA must give electronic notice of the decision to a person whose interests are affected by the decision.

Section 5.2 – Terms and conditions of use

Section 5.2 provides for ACMA to notify on the auction website terms and conditions in relation to certain aspects of the auction system, and to require a person to agree to the terms and conditions before participating in the auction process.

This section states that ACMA may notify on the auction website, terms and conditions in relation to:

- use of the auction website; and
- the registration process; and
- the allocation application process; and
- participation in the auction process; and
- the payment of moneys;
- the publication of the information set out in section 5.6;
- the use of numbers allocated as a result of the auction process; and
- any other matter that ACMA considers appropriate for the operation of the auction system.

This section states that ACMA may require a person to agree to any such terms and conditions before using the auction website, the registration process or the application process.

This section states that the terms and conditions notified above must not be inconsistent with:

- the Public Determination;
- the Charities Determination; or
- the Numbering Plan.

Section 5.3 – Liability of ACMA

Section 5.3 provides that 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 the Public Determination.

Section 5.4 – Recovery of damages by ACMA

Section 5.4 provides that the Public Determination is made without an intention to affect any legal rights which ACMA has or may have against any person which arose or arises under statute, common law, equity or otherwise.

Section 5.5 – ACMA may obtain information from applicants

Section 5.5 provides for ACMA to obtain information or documents from applicants.

This section states that, in cases where ACMA believes that an applicant possesses information or documents that may be relevant to the performance of any of ACMA's functions under the Public Determination, ACMA may, by written notice, require the applicant to provide the information and documents.

Any such notice given by ACMA may specify the manner, form and time period in which the information or documents are required. If an applicant is given a notice by ACMA under this section, the applicant must comply with the requirements set out in the notice.

Section 5.6 – ACMA may publish or release information

Section 5.6 enables ACMA to publish or release information which pertains to the auction process.

This section states that the information that ACMA may publish or release includes, but is not limited to:

- the personal details of any auction participant, including registered charities, applicants and bidders;
- the amount of any bid;
- the time any bid is placed; and
- the time and manner of payment of the eligible amount.

This section states that the information may be published on the auction website or elsewhere.

ACMA will only publish and release personal information where the person to whom the personal information relates has given informed consent. That is, the terms and conditions set out by ACMA under section 5.2 will inform prospective auction participants that the types of personal information listed above may be made publicly available by ACMA. Prospective participants would then be required to agree for this to occur before being able to participate in the auction process.

Section 5.7 – Definitions for Division 2

Section 5.7 inserts the following definition for the purposes of the transitional provisions of the Public Determination:

commencement day means the date on which this Determination commences.

Section 5.8 – Revocation of the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)*

Section 5.8 provides that the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)* is revoked—this was the previous determination relating to the public auction system for allocating specified FLRNs.

Section 5.9 – Transitional - participation notice given before commencement day

Section 5.9 sets out the transitional arrangements to facilitate the making and implementation of the Public Determination. Despite the revocation of the *Telecommunications (Freephone and Local Rate Numbers) Allocation Determination 2005 (No. 1)* under section 5.8 of this determination, if:

- a valid participation notice for a FLRN was given *prior* to the commencement day; and
- continues to be a valid participation notice *after* the commencement day;

the revoked determination which existed immediately before the commencement day continues to apply to the FLRN including the auction and auction process arrangements existing before, during and after the auction.