

EXPLANATORY STATEMENT

Issued by the authority of the Australian Communications and Media Authority

Telecommunications (Freephone and Local Rate Numbers – Charities) 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 – Charities) Allocation Determination 2007(No 1)* (the Charities Determination) is to provide for an allocation system for allocating specified freephone and local rate numbers (FLRNs) to ‘eligible charities,’ through which the successful applicant for a particular number can obtain the number by paying a minimal reserve price or, where there is competing charity interest in a number, the successful applicant and the amount to be paid for the number are determined through a sealed bid auction.

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 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 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 a single sealed bid auction for eligible charities. Since the implementation of these arrangements, the 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 determinations. 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 to change references from “ACA” to “ACMA”. Rather than amend the existing determinations, ACMA decided to revoke them and, in their place, make:

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

The purpose of the separate arrangements for charitable organisations 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 charities auction process

The objective of the charities auction process is to establish an allocation process that:

- provides preferential arrangements for charitable organisations to access FLRNs that are of strategic relevance to their work (so that such organisations are not unfairly disadvantaged when bidding against commercial organisations in the public auction process); and
- balances the need to provide preferential arrangements for charitable organisations with the broader objective of optimising allocative efficiency for FLRNs.

For the purposes of the Charities Determination, an ‘eligible charity’ is a charity that has been endorsed as an income tax exempt charitable entity under the *Income Tax Assessment Act 1997*.

An eligible charity can only access a specific number under the preferential arrangements if it gives the first participation notice in relation to that number. If an organisation other than an eligible charity gives a participation notice first, the charity will be required to compete for the number with commercial organisations in the public auction process under the Public Determination.

Under the Charities Determination, if no other charity gives a participation notice in relation to a particular number within the specified notification period, the charity which gave the participation notice will be able to obtain the rights of use in relation to the number by paying a minimal reserve price (set by ACMA). If more than one charity gives a participation notice in relation to a particular number, the charity that obtains the rights of use will be decided by a single, sealed bid auction process, conducted on a nominated day.

Charities will only be able to obtain the rights of use for numbers that can be linked directly via a phoneword to their name, a registered trade mark or registered business name or objects contained in their constituting documents. Where the link is based on a registered business name or trademark, the name or trademark must have been held for at least 12 months, or being used or traded under. Further, an eligible charity will only be able to subsequently trade a number obtained through the preferential access arrangements to another eligible charity that can also demonstrate a direct relationship to the number.

Consultation

ACMA has undertaken substantial consultation regarding the latest changes about clarification of the strategic link requirements for charity 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 Charities Determination was also published on the ACMA website along with an information paper explaining the proposed amendments and identifying their impact.

The feedback received in stakeholder discussions supported the proposed amendment and no objections were received. 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 the Charities Determination.

NOTES ON SECTIONS

Part 1 – Introduction

Section 1.1 – Name of determination

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

Section 1.2 – Commencement

Section 1.2 provides that the Charities 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 Charities Determination and the circumstances in which it does not apply.

This section provides that the purpose of the Charities Determination is to set out the procedures for allocating FLRNs by a sealed bid auction process. It also provides that the Charities 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 Public Determination.

Section 1.4 – Interpretation

Section 1.4 defines words and expressions used in the Charities Determination, including ‘eligible charity’, which means a charity that is endorsed as an income tax exempt charitable entity under Subdivision 50-B of the *Income Tax Assessment Act 1997*.

It also 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 auction system (i.e. the information technology system used by ACMA to facilitate the operation of the auction), the time that the auction 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 provides that any non-whole number, and any number with a five in the first decimal place, worked out in accordance with the Charities Determination is to be rounded up to the nearest whole number.

Section 1.5 – Strategic FLRN

Section 1.5 sets out the five grounds on which a FLRN is strategic for an eligible charity. This relates to the requirement under subsection 2.3(3) that each FLRN in a registered charity's allocation application under the Charities Determination must be a strategic FLRN for that charity.

A FLRN is strategic if it forms a word that:

- matches a word that is part of the name of the eligible charity; or
- matches a word within a recognised registered trade mark or recognised registered business name of the eligible charity; or
- 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 recognised registered business name of the eligible charity; or
- reflects the objects of the eligible charity as described in its constituting documents; or
- matches a word within a common usage version of the eligible charity's name.

In this section, a registered trademark will be recognised when, at the time the eligible charity lodges their application under section 2.3, *either*: the charity owns the trademark for at least 12 consecutive months immediately before the application, or the charity has used the trademark in relation to goods and services.

In this section, a registered business name will be recognised when, at the time the charity lodges their application under section 2.3, the business name is registered and *either*: has been registered for at least 12 consecutive months immediately prior to the application, or has been or is used to carry on business.

Section 1.6 – Approval of forms

Section 1.6 states that ACMA must, in writing, approve a number of documents that are required for use as part of the procedures set out in the Charities 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); and
- a participation notice (see section 2.8).

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

Section 1.7 – Auction manager

Section 1.7 provides that ACMA may, in writing, appoint an 'auction manager' to manage an auction conducted under the Charities Determination.

Section 1.8 – Ways in which ACMA gives information

Section 1.8 provides that ACMA may give any information to a person under the Charities Determination:

- by placing the information on the website used by ACMA to facilitate the auction process; or
- 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 1.9 – Method of payment of moneys to ACMA

Section 1.9 sets out rules regarding the payment of moneys that are due to ACMA under the Charities Determination.

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

- a registration fee may be imposed under subsection 2.2(3) of the charities determination—if so, that fee must be paid by a charity before it can be registered as a user of the auction website;
- an application fee may be imposed under subsection 2.4(1) of the Charities Determination—if so, that fee must be paid before an allocation application made by a CSP, jointly on behalf of the charity that wishes to obtain the rights of use to a number, can be considered valid; and
- an eligible amount imposed under subsection 4.2(1) of the Charities Determination—that is, the amount of the highest bid in an auction for a particular number, which must be paid by a 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 and only by the means specified notified under the relevant sections of the Charities Determination. 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 CSPs (if they have not already been issued under the Public Determination) and other people 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.

In practice, it is expected that:

- for registered charities, 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. While this section provides for ACMA to set these fees, currently ACMA does not set a registration or application fee under the Charities Determination.

Section 2.2 – Registration

Section 2.2 provides that an ‘eligible charity’ that is interested in obtaining a FLRN using the auction process may apply to ACMA to be registered. This section also sets out the requirements that apply to such applications and the entitlements of an ‘eligible charity’ once it has successfully registered.

An eligible charity which has successfully registered under section 2.2 is known as a ‘registered charity.’ A registered charity 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, under section 2.3, with a CSP of its choice for the allocation of a particular number.

This section states that a registration application must be made electronically, using a registration application form approved by ACMA under section 1.6 and the auction website.

This section also states that, once a charity has made a registration application that meets the above requirements, the charity will be given a unique identifier by ACMA, which the charity may use to access the auction website (unless the charity has previously been given a unique identifier under the Public Determination).

A new application for registration is required to be made by a registered charity if that charity 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 charity to apply, jointly with a registered CSP of its choice, for the CSP to be allocated a particular number or numbers.

The requirement for registered users to make their allocation applications jointly with a registered CSP 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.

Section 2.3 also sets out the requirements that apply to such applications, including that each number in the application must be strategic for the charity. This is determined by reference to the grounds listed in section 1.5.

Section 2.3 also states that an allocation application must:

- be lodged by the CSP with whom the registered charity is jointly making the application;
- be made electronically, using an application form approved by ACMA under section 1.6 and the auction website; and
- be made using the CSP's unique identifier and the registered charity's unique identifier.

It also notes the circumstances in which ACMA may refuse a registered charity's application:

- the registered charity is not or is no longer an 'eligible charity';
- one of the numbers in the application is not strategic for the registered charity;
- or
- the registered charity or the CSP with whom it is jointly making the application has not complied with or agreed to the terms and conditions of use set out under section 5.2.

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 an application fee (if any) 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 charity showing the date of the application and each number in the valid application.

A registered charity with a valid application is entitled to:

- use the valid application for a period of 12 months from the date of the receipt;
- give ACMA a participation notice to start the auction process in relation to an available number contained in the application any time during the 12 months that the application is valid (section 2.9 sets out how a participation notice may be given); and
- bid at an auction for any available number listed in the valid application.

This section states that an application is no longer valid if:

- the 12 month application period has ended;
- the registered CSP with whom the application was jointly made withdraws the application under section 2.6; or
- if the registered charity is not or is no longer an eligible charity.

Section 2.5 – Changes during the application period

Section 2.5 sets out restrictions on the changes that a registered charity may make to an application it has made under section 2.3.

Section 2.5 states that if, during the period in which an application is valid, a registered charity wishes to change the name in which it has made the application or a number contained in the application, it will need to make a new application under section 2.3. A registered charity may change its 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 charity has given a participation notice for a particular FLRN, apply to ACMA for cancellation of the application under section 2.3(6).

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 charity who is the other party to the joint application has:

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

the application is no longer valid and the registered charity must make a joint application with another registered CSP under section 2.3.

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

- given a first 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 charity may continue to participate in the auction process. However, if the charity subsequently wins the auction process, it must make arrangements for another registered CSP to be allocated the number within 14 days of the close of the auction. A failure on the charity's part to make such arrangements would constitute a default by the bidder in accordance with section 4.4 with the bidder and FLRN being subjected to the consequences set out in that section.

Section 2.8 – Participation notice

Section 2.8 allows a registered charity 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;
- the means by which a participation notice must be given; and
- the circumstances in which a participation notice will be rejected.

The primary function of a participation notice is to trigger the notification period in respect of a number that a registered charity wishes to obtain. This will identify the number on the auction website for possible sealed bid auction, which will be scheduled if a second registered charity gives a participation notice in relation to the number. If no other participation notices are given for that number within the notification period, then the registered charity that gave the first participation notice will be able to obtain the number by paying the reserve price. The effects of a participation notice are set out in section 2.9, below.

Section 2.8 states that a participation notice may be given at any time before the auction starts, as determined under subsection 3.5(1). It also states that a separate participation notice must be given for each number the registered charity wishes to obtain.

This section also states that a participation notice must:

- state the number for which the registered charity wishes to obtain the rights of use;
- be made using the registered charity's unique identifier; and
- be given to ACMA electronically, using the form approved by ACMA under section 1.6 and the auction website.

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

- the registered charity's application is no longer valid (this may occur through any of the circumstances listed in subsection 2.4(4)); or

- a participation notice has already been given for the number in accordance with the public auction allocation process as set out in the Public Determination; or
- it is for a number that ACMA has directed registered CSPs to be only available for application for administrative allocation.

This section also provides a discretion for ACMA to cancel a first participation notice at any time prior to lodgement of a further participation notice for the same FLRN, if ACMA is satisfied in all the circumstances that it appropriate to do so.

2.9 – Effect of participation notice

Section 2.9 sets out the effects of a participation notice given by a registered charity under section 2.8.

When the first participation notice is given to ACMA:

- the notification period will begin—ACMA will notify on the auction website that the first participation notice has been given, and by whom, and other eligible charities will be able to lodge further participation notices within the notification period of 10 working days;
- the first participation notice will constitute a bid for the number at reserve price; and
- if an auction is scheduled, the charity will be entitled to make a higher bid by making a sealed bid.

If no further participation notice is received by ACMA within the notification period, the auction will be deemed closed and the registered charity that lodged the first valid participation notice will be the successful bidder for the number at the reserve price.

If a second participation notice is received, ACMA will set an auction day for the number in accordance with section 2.11. After the auction day has been set, any further participation notices will have no effect.

ACMA may notify on the auction website the names of eligible charities that have lodged participation notices for the number.

Any charity that has a valid application for a number may still bid for the number at auction regardless of whether it has lodged a participation notice during the notification period.

Section 2.10 – Reserve prices

Section 2.10 provides for ACMA to set the amount of the reserve price applicable to each number to be auctioned under the Charities Determination. 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 amount for each number that is available for auction under the Charities Determination;

- once set by ACMA, the reserve price must be notified on the auction website at least 10 working days before it will have effect; and
- the reserve price for a number is the amount set by ACMA and notified on the auction website at the date when the first participation notice was given for the number.

2.11 – Auction days

Section 2.11 provides for ACMA to set auction days. It also sets out rules about how ACMA must make known the auction days it sets.

This section states that ACMA must:

- schedule a day as an auction day that is at least 15 working days after the first valid participation notice is given; and
- publicise the auction day on the auction website at least 10 working days before the scheduled day.

ACMA believes that these periods are sufficient to provide charities with reasonable time to make arrangements to apply and bid for a number, without causing undue delay to those who require a timely process.

As a minimum, it is expected that ACMA will periodically schedule auction days to occur on a regular basis, such as on a particular day each month.

Part 3 – Auctions

Section 3.1 – Bidding

Section 3.1 sets out the rules for bidding in an auction.

It provides that any eligible charity with a valid application may make a bid at auction for a number listed in the application, regardless of whether it has given a participation notice in respect of the number.

It provides that all bids will be sealed bids, and that ACMA will only consider bids after the auction period closes, as set out in section 3.5.

ACMA may notify on the auction website the names of eligible charities that have made bids.

The requirements that a bid must meet in order to have effect are that:

- it must be made during the auction period (as defined in section 3.5) using the registered charity's unique identifier; and
- it must be for at least the reserve price of the number.

Section 3.2 – How to take part in the auction

Section 3.2 provides that all bidding in an auction under the charities determination must be conducted electronically using the auction website.

Section 3.3 – No withdrawal of bids

Section 3.3 provides that once a charity has made a bid, it may not withdraw that bid.

Section 3.4 – Revocation or suspension of registration or participation in auction

Section 3.4 provides for ACMA to suspend and/or exclude a registered charity from participating in an auction if the charity 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 *revoke* a registered charity's registration and/or exclude it from participating in an auction if the charity has made a false statement to ACMA;

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

For the purposes of section 3.4, a 'false statement,' has the meaning given in subsection 136(1) of the *Criminal Code Act 1995*.

Section 3.4 provides that ACMA may also revoke a registered charity's registration and/or exclude it from participating in an auction if ACMA is satisfied that the person is not, or is no longer, an eligible charity.

Section 3.4 also gives ACMA the power to exclude a charity from participating in any or all future auctions where ACMA is reasonably satisfied in all the circumstances that the charity is likely to engage in conduct that is prejudicial to the efficient and fair operation of the auction process. This provision has been broadened to enable ACMA to take appropriate action where a registered charity may have previously been engaged in unsatisfactory conduct, which may include, but is not limited to, disguising its true identity.

Section 3.4 states that if ACMA takes action under this section, it must inform the affected charity of its reason for doing so. Under section 5.1, a decision by ACMA to take action under section 3.4 may be reviewed by the Administrative Appeals Tribunal.

Section 3.5 – Opening and closing of bidding period

Section 3.5 sets out rules about when a bidding period for a FLRN opens and closes (the bidding period).

This section states that the bidding period for a FLRN will commence at 11 am and close at 4 pm on the auction day set by ACMA in accordance with section 2.11. If an auction has been suspended or cancelled under section 3.6, the bidding period will close at 4 pm on the day the auction is resumed.

Section 3.5 also provides that no bids will be accepted after the bidding period has closed.

Section 3.6 – Suspension or cancellation of auction

Section 3.6 provides for ACMA to suspend or cancel an auction under certain circumstances. This section also sets out rules about when a suspended auction will resume, and what happens to a number that was the subject of a cancelled auction.

This section states that ACMA may suspend or cancel an auction or at any time prior to the closing of the bidding period in the following circumstances:

- if it has excluded or suspended a registered charity from participating in an auction; or
- if it has revoked a person's registration as an eligible charity; or
- because of a technical failure in the auction website or the auction system; or
- because of an event beyond the control of ACMA; or
- 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.

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.

Where an auction has been suspended this section provides that:

- ACMA may either resume the auction or cancel the auction;
- if the suspension was 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 the suspension was because ACMA has excluded or suspended a person's registration as an eligible charity, the auction may resume at the point immediately prior to the exclusion or the suspended charity's first bid; and
- if the auction is resumed and the highest bid at the close of the auction was made prior to the suspension, the registered charity that made the highest bid may either:
 - confirm its bid; or
 - apply to ACMA for cancellation of the auction (such an application must be accompanied by written reasons for the request).

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 3.7 – Successful bidder

Section 3.7 provides that after the auction period has closed, ACMA will open all sealed bids received during the auction period, and notify the highest bidder on the auction website.

The section provides that the registered charity that is the highest bidder for a number at the close of an auction is the successful bidder for the number. It provides that if there are two or more equal highest bids, then the bidder whose bid was received first by ACMA will be the successful bidder.

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 under the Numbering Plan.

Part 4 – After the Auction

Section 4.1 – Successful applicant 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 1.9, which sets out the method of payment of moneys to ACMA.

Section 4.2 states that 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 section 463 of the Act, the allocation of a number under the auction system is dependent on the payment of the eligible amount. Although the successful bidder is assured of the right to be issued the number under section 4.9, the number must first be allocated to the CSP for this to occur. It is therefore appropriate that the payment necessary for the allocation to occur should be 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 the bidding period is taken to have closed are set out in section 3.5.

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 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, 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 Charities 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 unpaid eligible amount

Section 4.6 sets out the arrangements 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 3.4, a former successful bidder is not prevented from participating in subsequent auctions under the Charities Determination or the Public Determination or being allocated a FLRN under the administrative or emergency allocation arrangements of the Numbering Plan.

Section 4.9 – Entitlements after payment of eligible amount

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) and 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 by Administrative Appeals Tribunal

Section 5.1 provides for certain decisions made by ACMA to 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 any of the following decisions may be subject to review by the AAT:

- a decision under subsection 2.3(5) to refuse an allocation application;
- a decision under subsection 2.3(6) to cancel an allocation application;
- a decision under section 3.4 to suspend or revoke a charity's registration or exclude a bidder from participating in an auction;
- a decision under section 3.6 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 charity whose interests are affected by the decision.

Where such electronic notice is given, section 5.1 provides that it must include a statement to the effect that:

- a charity dissatisfied with the decision may apply to the AAT for a review of the decision; and
- the charity may request a statement under section 28 of the *Administrative Appeals Tribunal Act 1975* in relation to 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 charity 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; and
- the publication of the information set out in section 5.6; and
- 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 charity 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 Charities Determination;
- the Public 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 Charities Determination.

Section 5.4 – Recovery of damages by ACMA

Section 5.4 provides that the Charities Determination is made without an intention to affect any legal rights which ACMA has or may have against any charity 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 Charities Determination, ACMA may, by written notice, require the applicant to provide the information and documents.

This section also states that any such notice given by ACMA may specify the manner, form and time period in which the information or documents are required.

Section 5.5 also states that 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 or release personal information where the person to whom the personal information relates has given informed consent. 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 must 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 Charities Determination:

commencement day means the date on which this Determination commences.

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

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

Section 5.9 – Transitional – participation notice given before commencement day

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

- a valid participation notice for a FLRN was given *prior* to the commencement day; and
- the notice was not cancelled before 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.