New arrangements for the banned equipment and exemptions framework

Consultation paper

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Executive summary

In May 2020, we initiated a review of the banned equipment and exemptions framework under the *Radiocommunications Act 1992* (the Act).[[1]](#footnote-2) The framework involves us exercising statutory powers to ban specified types of equipment, and to define certain circumstances where the sections of the Act do not apply. We do so by making permanent bans under section 172 of the Act, and by making exemption determinations under sections 27 and 302.

A review of the framework was timely for several reasons:

We were encountering more instances where permanent bans were over-inclusive (and were precluding use of beneficial technologies) or under-inclusive (and were not optimally regulating certain types of jamming equipment).

Five of the ten instruments in the framework are due to sunset in 2023, with further instruments sunsetting in 2025.

the Department of Infrastructure, Transport, Regional Development, and Communications was progressing consideration of legislative reforms to the Act through development of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (the Modernisation Act) and was considering proposals that could introduce significant reforms to the exemption regime.

We released a [consultation paper](https://www.acma.gov.au/consultations/2020-05/arrangements-jamming-devices-and-radiocommunications-device-exemptions-consultation-152020) that identified high-level scoping and operational issues, and invited submissions to help us build an evidence base, understand technology and industry developments, and inform our next steps. We received 20 submissions to the consultation, and have since held a number of meetings and workshops with stakeholders.

Our iterative approach has already delivered reform, and we have simultaneously conducted a first-principles and holistic review of the framework.

In this paper, we describe our approach to the review and what we have achieved, and seek views on instruments and arrangements that will complete the review.

The review will achieve the following outcomes:

Better regulation of equipment designed to cause interference.

New commercial and strategic opportunities for industry.

Exemptions are fewer, simpler, fit-for-purpose, and flexible.

The ability to licence previously banned, publicly beneficial technologies.

The removal of redundant regulation.

A diagram of the framework prior to, and after the review, is at Figures 1 and 2.

Licensing of a broader range of radionavigation-satellite system (RNSS – i.e., GPS) retransmission devices is one of the major outcomes of the review. We will consult on, and implement, a technical, licensing and taxation framework for these devices.

**F**i**gure 1: Exemption regime (key: light grey = old instrument; light green = new instrument; purple = new framework; blue = information document).**

Radiocommunications (Australian Federal Police–Visiting Dignita­ry) Exemption Determination 2016/2017/2018/etc.

Radiocommunications (Police Forces–Disruption of Unmanned Aircraft) Exemption 2020

Radiocommunications (Unmanned Aircraft and Unmanned Aircraft Systems) Exemption
Determination 2019

Radiocommunications (Prohibited Device) (RNSS Jamming Device) Exemption Determination 2014

Radiocommunications (PMTS Jamming Devices–Visiting Forces and Suppliers Exemption Determination 2011

Radiocommunications (Public Mobile Telecommunications Surveillance Device) Exemption Determination 2011

Radiocommunications Advisory Guidelines (Use of Electronic Counter Measures for Bomb Disposal
Activities) 2010

​Radiocommunications (Exemption–Visiting Dignitaries) Determination 2022

Radiocommunications (Exemption–Corrective Services NSW) Determination 2021​

Radiocommunications (Exemption–Bomb Disposal Electronic Counter Measures) Determination 2022​

Radiocommunications (Exemption–Remotely Piloted Aircraft Disruption) Determination 2022

Allowed to sunset

**Then (May 2020)**

**Now – Section 27 regime**

Use of banned equipment under the *Radiocommunications Act 1992* by law enforcement and related persons

Innovation and industry development framework

Radiocommunications (Prohibited Devices) (Use of Electronic Counter Measures for Bomb Disposal Activities) Exemption Determination 2010

Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018

Radiocommunications (Testing and Field Trial by Corrective Services NSW of PMTS Jamming Devices at Goulburn Correctional Complex) Exemption Determination 2016

**Figure 2: Banned equipment regime**

**New – Section 302 regime**

Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011

Radiocommunications (Prohibited Devices) (RNSS Jamming Devices) Declaration 2014

Radiocommunications (PMTS Jamming Equipment) Permanent Ban 2022

​Radiocommunications (RNSS Jamming Equipment) Permanent Ban 2022

​Radiocommunications (RLAN and RPAS Jamming Equipment) Permanent Ban 2022

**Then (May 2020)**

**Now**

# Issues for comment

We welcome feedback on the overall framework, and on proposed exemption and permanent ban instruments attached to this consultation.

We are especially interested in views about whether legitimate communications devices are adequately excluded from the scope of the proposed permanent bans.

We also welcome feedback from stakeholders on:

our future work on licensing of RNSS retransmission technologies

the innovation and industry development framework

any other issues raised in this consultation.

# Regulatory context

The Act covers the management of the radiofrequency spectrum. It requires that radiocommunications devices must be licensed, that such devices and other equipment comply with equipment regulation, and that persons do not cause interference to radiocommunications (Parts 3.1, 4.1 and 4.2 of the Act, respectively).

Equipment designed to cause interference to radiocommunications – referred to as ‘jamming devices’ or ‘jammers’ – is generally incompatible with the licensing and technical regulation systems under the Act. Section 172 of the Act provides for the targeted regulation of such equipment, by empowering us to impose a permanent ban on equipment of a specified kind.[[2]](#footnote-3)

There are criminal and civil penalties associated with the possession, operation, offer to supply, and supply of equipment subject to a permanent ban. Equipment subject to a permanent ban is also a prohibited import under subregulation 4(2) of the [Customs (Prohibited Imports) Regulations 1956](https://www.legislation.gov.au/Series/F1996B03651) (Customs Regulations).

The Act acknowledges that exempting people from the prohibitions in Parts 3.1, 4.1 and 4.2 – and facilitating access to and operation of banned equipment – may be warranted in some cases, through the use of exemptions. Historically, we have used our exemption power under section 27 of the Act to facilitate access to banned equipment by those persons performing functions related to national defence, security, law enforcement and emergency services.

Amendments to the Act introduced by the Modernisation Act have also empowered
us to make a new type of exemption under section 302. Exemptions made under section 302 can apply to a broader range of persons than provided for by section 27, although the potential scope of the exemptions is much narrower.[[3]](#footnote-4) These exemptions are more appropriate for facilitating commercial and scientific opportunities involving banned equipment.

In the Act, all radiocommunications devices are a subset of equipment. Equipment is a broad definition that can include radiocommunications devices:

anything designed or intended for, or capable of, radio emission

anything that has a use or function capable of being interfered with by radio emission.

In this paper, we generally use the term ‘devices’ to refer to radiocommunications devices that are professionally designed to facilitate communication – unlike jamming equipment, which is not usually designed to do so.

# Conducting the review

We have reviewed the scope and operation of the banned equipment and exemptions regimes as a single framework due to the interactions between the two. In practice, permanent bans protect consumers, businesses, and network and service providers from the potentially adverse effects of equipment designed to cause interference to radiocommunications.

Exemptions under section 27 of the Act facilitate a range of safety, security, law enforcement and defence outcomes that can only be achieved using equipment that would otherwise be banned. Exemptions under section 302 are intended to help promote innovation and industry development opportunities in Australia involving what could otherwise be banned equipment.

## Our approach to the review

In approaching the review, we considered the object of the Act. We looked at how the framework and specific instruments could promote the long‑term public interest from use of the spectrum.

With regard to banned equipment, we considered that although access to and operation of banned equipment is incompatible with many aspects of the Act, it facilitates use of the spectrum for non-commercial purposes, such as defence, national security and public safety. We also considered how access to banned equipment could promote commercial use of the spectrum, which has historically not been a feature of the framework.

We noted that exemptions that support law enforcement facilitate use of the spectrum for non-commercial, publicly beneficial outcomes. We weighed up how we could enhance the exemptions regime in ways that would assist law enforcement in delivering those outcomes.

We also considered that, where possible, the framework should help promote national innovation and industry development and align with national priorities relating to domestic manufacturing and exports.

The regulatory environment was dynamic while the review was being undertaken. When we initiated the review in May 2020, the Department was progressing legislative reform, and in December 2020, Parliament passed the Modernisation Act. We have taken an iterative approach to the review, while simultaneously implementing new exemption powers under the Modernisation Act, attending to sunsetting instruments, and responding to stakeholder needs.

The iterative approach means that the review has already delivered significant reforms. Consultation on, and implementation of, the remaining elements of the review will deliver further reform.

## What stakeholders told us

We received 20 submissions to the issues paper we released in May 2020.

We received submissions from:

* Aeromobile
* Australian Border Force
* Australian Federal Police
* Australian Maritime Safety Authority
* Australian Mobile Telecommunications Association/Communications Alliance (joint submission)
* Australia-New Zealand Counter-Terrorism Committee
* Australian Radio Communications Industry Association
* Australian Railway Association
* Corrective Services New South Wales
* Department of Defence
* DroneShield
* Fire and Rescue New South Wales
* NSW Telco Authority
* Optus
* RFI
* Step Global
* Transport for New South Wales
* Transurban
* University of Melbourne

Vicom.

Stakeholders broadly agreed that the framework is essential and performing well. Most submissions expressed the view that the framework could be more flexible and facilitate a wider range of devices and activities by the public and private sectors.

Some stakeholders noted that the existing permanent bans were precluding use of some devices that should not be banned. However, stakeholders also reinforced that the banned equipment regime is very important in keeping disruptive equipment out of the supply chain. They urged that any changes should be carefully considered.

Stakeholders recognised that exemptions play an important role in the overall radiocommunications regulatory framework and enable policy outcomes in other portfolios. Some stakeholders felt that exemptions can be rigid in their construction, and that the legislative instrument-making process does not allow for new exemptions, or changes to existing exemptions, to be made in a timely manner. Some stakeholders suggested that permanent bans could remain more or less as they are. They believed we could instead use exemptions more frequently to facilitate specific uses of equipment that could notionally be authorised under the licensing system but would be better off overall remaining banned. Other stakeholders submitted that exemptions should be used sparingly and, where they are used, contain a high level of transparency.

## Reform challenges

Reform in the banned equipment and exemptions space is challenging for a number of reasons.

In respect of bans on equipment, it is desirable that the equipment is clearly defined in a way that applies consistently and anticipates changes in technology. However, over the last 10 years, the bans have come to apply to a range of devices that were not necessarily contemplated as being appropriate to ban. Changes in technology and operational needs have seen us and some stakeholders form the view that certain equipment should no longer be banned.

Decision-making in relation to exemptions and permanent bans has been made via legislative instrument alone. This means a narrowly-drafted exemption cannot readily accommodate changes in technology or the operating environment. For exemptions in particular, this means that instruments need to strike the right balance. They need to be broad enough for persons operating under them to use their judgement and discretion, yet narrow enough to clearly define the scope of the legal relief. The instrument-making proces2s, as opposed to administrative decision-making processes, is less geared towards facilitating frequent or rapid changes.

There have historically been no ‘middle powers’, ‘interim’ or ‘over-the-counter’ solutions in the framework that are equivalent to permits for non-standard devices or scientific apparatus licences for new technologies or experimental devices. This can limit the extent to which we can facilitate trials or novel uses of banned equipment.

Another challenge that we and stakeholders identified was that, before the Modernisation Act, the exemption powers available to the ACMA applied to a narrow class of persons. Under section 27 of the Act, we can only provide exemptions by legislative instruments for:

* people performing certain functions or duties in relation to the defence, security or international relations of Australia

people performing certain functions or duties in relation to a limited number of specified bodies, broadly concerned with defence, law enforcement and emergency services.

Over the last few years, we have encountered instances where it might have been desirable to make an exemption to facilitate access to banned equipment by a person to whom section 27 does not apply. In most cases, the person expressed interest in accessing banned equipment for the purpose of domestic manufacturing, research and development (R&D), or trialling a new technology that was banned.

## Reform opportunities – permanent bans

There are 2 existing permanent bans:

The Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011, which is intended to manage the risks associated with public mobile telecommunications service (PMTS – i.e., mobile phone) jamming equipment.

the Radiocommunications (Prohibited Devices) (RNSS Jamming Devices) Declaration 2014, which is intended to manage the risks associated with radionavigation-satellite service (RNSS – i.e., GPS) jamming equipment.

These bans have been in force for approximately 10 years in their current forms and, at the time they were made, did not depart widely from their precursor instruments.

We believe the permanent bans have been successful in managing the risks associated with equipment that is dangerous or could cause a nuisance to users of the spectrum. However, in recent years, we are encountering more devices that are captured by the bans in an incidental way. We are also encountering a class of equipment designed to cause interference that is sub-optimally regulated.

Both permanent bans will be sunsetting soon, and there is an opportunity to reconfigure them to be fit-for-purpose now and into the future.

## Reform opportunities – exemptions

Section 27 of the Act provides that we may make exemptions for law enforcement and related persons. Other sections provide for specific exemptions, including for Defence in relation to its use of banned equipment and other matters.

Gradual changes in technology have seen law enforcement, and a widening range of public and private entities, approach us in relation to using banned equipment under exemptions. For example, drones have historically been a military – rather than commercial or consumer – technology, as has the electronic means to counter them. Counter-drone equipment is increasingly being sought by public and private entities, and we are aware that it is becoming more prevalent. Similarly, RNSS retransmission devices and similar technologies have historically not been of general interest to non-Defence entities.

These changes have also seen members of the Australian defence industry and technology sectors approach the ACMA for exemptions to facilitate domestic manufacturing of banned equipment – something that the exemption regime could not easily facilitate before the Modernisation Act.

The changes to the Act introduced by the Modernisation Act have created opportunities for us to make the exemptions regime more flexible. This is in respect of both the range of persons to whom it may apply, and our ability to be more responsive in decision-making.

The insertion of subsection 27(2A) into the Act expressly provides for exemptions to confer a power to make an administrative decision on the ACMA or another person. Administrative decisions can be made more rapidly than legislative decisions and provide greater flexibility for the ACMA and persons to whom exemptions apply.

The new exemption power at section 302 of the Act creates a new type of exemption from criminal offences and civil penalties associated with access to, and operation of, banned equipment. Unlike section 27 exemptions, these exemptions can apply to any person, and are principally intended to facilitate innovation and industry development opportunities. These are likely to involve manufacturing, R&D and product development activities.

We also noted that drafting approaches to exemptions have differed over the last decade. While exemptions manage different risks, we took the view that, where possible, we should take a standardised approach as to how exemptions are structured, and harmonise requirements as appropriate.

We also considered ways that exemptions, and how we consider requests to make them, could be more transparent.

In designing and implementing the new exemption power under section 302, we also considered how our regulatory arrangements could complement other government initiatives relating to export opportunities for the Australian defence industry and facilitating domestic manufacturing.

## Our approach to reform

Our overall approach to implementing the permanent ban regime has been to:

* continue to ban equipment that is designed to interfere with socially, economically and strategically critical radiocommunications services – i.e., PMTS and RNSS
* respond to and anticipate the prevalence of, and demand for, a new class of equipment designed to cause interference to Wi-Fi services and drones

target permanent bans towards equipment that is expressly designed to cause interference, rather than equipment that might only potentially cause interference if used inappropriately or in a certain context.

Our overall approach to implementing the exemption regime has been to:

* use administrative powers creatively and proportionately, by making exemptions that provide for delegated decisions on operational matters, or creating permit-like administrative arrangements
* simplify conditions that have become overly complex over time, or which no longer serve a practical regulatory outcome
* take a risk-based approach that recognises agency expertise with banned equipment, and that closely regulates private sector access to banned equipment
* implement standardised record-keeping obligations on exempted persons, as appropriate

have all new exemptions expire after 5 years, to facilitate bulk review and remaking.

# Review outcomes

## Our progress

To date, we have undertaken the following activities:

* Released an issues paper identifying high-level scoping and operational issues, and invited submissions that could inform our next steps.
* Consulted on and implemented exemption arrangements to facilitate the use of counter-drone capability by Australian police.
* Consulted on and implemented a proposal to amend permanent ban arrangements to facilitate [trials of RNSS repeaters in road tunnels](https://www.acma.gov.au/consultations/2020-05/arrangements-jamming-devices-and-radiocommunications-device-exemptions-consultation-152020).
* Held workshops to discuss specific instruments and operational matters with stakeholders to whom exemptions do not apply, but whose licensed radiocommunications services may be adversely affected by operations authorised by exemptions.
* Worked with the Department on new exemption powers in the Act, and with the Department and the Department of Home Affairs on consequential changes to the Customs Regulations, which were passed by the Parliament as part of the Modernisation Act.
* Liaised with all those benefitting from existing exemptions to review those exemptions and determine future needs.
* Engaged with people who had expressed interest in benefitting from an exemption to discuss their near and long-term plans.
* Designed, [consulted on](https://www.acma.gov.au/consultations/2021-06/innovation-and-industry-development-exemptions-banned-equipment-consultation-212021) and implemented the [innovation and industry development exemption framework](https://www.acma.gov.au/innovation-and-industry-development-exemption-framework) under the new section 302 of the Act, and processed an application to access it.
* Streamlined exemption arrangements that authorise use of PMTS jamming equipment across 2 correctional facilities in NSW.
* Reviewed the scope and operation of all instruments in the framework, and prepared new and remade instruments for consultation.

## The framework – then and now

When we initiated the review, the banned equipment and exemptions framework comprised:

* 2 permanent bans
* 8 exemptions
* an advisory guideline[[4]](#footnote-5)

ad hoc exemptions to facilitate security operations for visiting dignitaries.

The new framework will comprise:

* 3 permanent bans
* 4 exemptions
* an information document on exemptions for law enforcement and stakeholders

a new permit-based system for manufacturing and R&D (the innovation and industry development exemption framework).

Figures 1 and 2 above illustrate the old and new framework.

## Outcomes

Some of the outcomes of the review have already been achieved; others stand to be achieved following the making of 6 instruments – 3 permanent bans and 3 exemptions made under section 27 of the Act.

It is our view that, as an overall outcome, the review will deliver a framework that will be much improved for regulated entities, stakeholders and the ACMA, and will deliver more public benefit than it has over the last decade.

Once fully implemented, the following regulatory reform outcomes will be achieved.

### Equipment designed to cause interference will be better regulated

* PMTS and RNSS jamming equipment will be better and more narrowly defined.
* Wi-Fi and drone jamming equipment will be banned.

Fewer ‘false positives’ (i.e., fewer ‘legitimate’ devices will be caught by bans).

### New commercial and strategic opportunities for industry

* The new innovation and industry development framework will benefit the Australian defence industry and technology sector.
* The permit-based system provides flexibility for applicants and manages interference risks.
* Domestic R&D, manufacturing, international export opportunities can be realised.
* System aligns with government domestic and defence industry policy.

One successful application processed so far.

### Exemptions will be fewer, simpler, fit-for-purpose, and flexible

* Streamlined exemption arrangements for prisons operated by Corrective Services NSW.
* Instruments will provide for delegated operational decisions where appropriate.
* A permit-based exemption system for the Australia Federal Police (AFP), state and territory police, and related security personnel, providing security capability for visiting dignitaries.

Information for law enforcement and stakeholders will provide transparency and additional information.

### Previously banned publicly beneficial technologies will be able to be licensed

* Legitimate communications technologies and other publicly beneficial technologies that were previously banned will be able to be licensed and used.

RNSS repeaters, RNSS retransmission devices and pseudolites will no longer be banned.

### Redundant regulation will be removed

* Conditions with no policy outcome will be excised.
* Provisions for otherwise banned communications systems on aircraft will be removed.

Defence and Defence supplier access to banned equipment is better regulated under primary legislation.

Some of these outcomes, such as the use of certain RNSS repeaters, and the innovation and industry development exemption framework, have already been achieved. These initiatives have made the banned equipment regime more targeted, enabled the planning of real-world trials of previously banned equipment, and provided a flexible and responsive permit-based system to enable domestic manufacturing, R&D and the export of banned equipment. These represent significant reforms to the framework.

Other outcomes will be achieved by the making and implementation of new and remade instruments – 3 exemptions and 3 permanent bans – as set out in the next chapter.

# New and remade instruments

## Banned equipment

Under the reviewed framework, there are 3 permanent bans. Two of the bans repeal and replace the existing bans, although we have reconfigured their scope. One of the bans is new.

### Permanent ban on PMTS jamming equipment

#### Background

PMTS jamming equipment can be used to block, or otherwise interfere with, radio emissions between a mobile station (for example, a mobile handset) and a base station. Consequently, PMTS jamming equipment can be used to prevent mobile stations from sending or receiving voice and data traffic to, or from, a telecommunications network. The interference generated by PMTS jamming equipment can affect the quality, reliability and coverage of PMTS.

Businesses and individuals rely on PMTS for voice and data services. Preventing or otherwise disrupting the supply of those services has the potential to adversely affect the public on a large scale. For example, it may prevent access to emergency call services, result in loss of business or cause inconvenience to mobile phone users.

The existing permanent ban has specific arrangements that facilitate the supply and operation of certain equipment that incorporates a PMTS jamming component. However, it is otherwise principally intended to provide a carriage service on a domestic aircraft and is authorised by PMTS C apparatus licence.

In submissions to our consultation paper, stakeholders expressed the view that the permanent ban arrangements for PMTS jamming equipment were largely fit for purpose, and that there was an ongoing need for them to remain in force.

#### New arrangements

The proposed Radiocommunications (PMTS Jamming Equipment) Permanent Ban 2022 (Attachment A in the key documents contained in this consultation)would repeal and replace the existing permanent ban on PMTS jamming equipment.

Consistent with our approach to reform, we are proposing to narrow the scope of the ban so that the type of equipment to which the ban applies is more specific. Under the current ban, PMTS jamming equipment is defined as a device that operates on frequencies used for the supply of PMTS and which is designed to cause interference, or which would be likely substantially to interfere with, disrupt or disturb radiocommunications.

This approach means that equipment that is not necessarily designed to cause interference may be subject to the ban. Whether equipment – or any transmitter – that is not designed to cause interference but is nonetheless likely to cause interference will depend greatly on the operational context and on the behaviour of the person using the equipment. Our view is that the current ban has the capacity to incidentally apply to legitimate communications devices that could otherwise be licensed.

Under the new ban, PMTS jamming equipment would be defined as equipment that is:

designed to have an adverse effect on radiocommunications, and is capable of operating on a PMTS frequency (whether or not it is capable of operating on another frequency)

designed to block radio emissions between a base station used in the provision of a PMTS and a mobile station (whether or not the equipment is designed to have other purposes or consequences).

To ensure that the ban does not apply to legitimate communications devices, the ban would also provide that, if the principal purpose of equipment is to enable a person to use a carriage service,[[5]](#footnote-6) the equipment is not PMTS jamming equipment.

We are also proposing to remove the provisions in the old ban that facilitate use of equipment on domestic aircraft that might have otherwise been banned. Because the principal purpose of that equipment is to enable a person to use a carriage service, it would not be banned equipment under the new ban.

### Permanent ban on RNSS jamming equipment

#### Background

The near-ubiquitous availability of the RNSS has seen it increasingly used in a wide range of consumer, commercial and public-purpose applications. It is critical to certain industries, including aviation. The adverse effects of using RNSS jamming equipment may range from inconvenience to RNSS users, to threats to public safety. Banning RNSS jamming equipment helps ensure the reliability and quality of RNSS for spectrum users by minimising the potential for interference.

Historically, RNSS jamming equipment has been defined as equipment that is designed to have an adverse effect on the reception by RNSS receivers of RNSS radiocommunications, and which would be likely to substantially interfere with, disrupt or disturb the reception by RNSS receivers of RNSS radiocommunications.

Following public consultation, in September 2020 we amended the permanent ban arrangements to provide that certain types of RNSS repeaters were no longer subject to the ban. We did so with a view to facilitating trials of RNSS repeaters in road tunnels.

#### New arrangements

The proposed Radiocommunications (RNSS Jamming Equipment) Permanent Ban 2022(Attachment B in the key documents contained in this consultation)would repeal and replace the existing permanent ban on RNSS jamming equipment.

Like the new arrangements for PMTS jamming equipment, the ban on RNSS jamming equipment would only apply to equipment that is expressly designed to cause interference. This means equipment that might be likely to cause interference to RNSS services, but is not otherwise not designed to do so, would not be captured by the ban.

The new ban would provide that RNSS jamming equipment is defined as:

equipment that is designed to have an adverse effect on radiocommunications and is capable of operating on an RNSS frequency (whether or not it is capable of operating on another frequency)

equipment that is designed to block radio emissions between an RNSS transmitter and an RNSS receiver.

To ensure that devices designed to provide communications services on RNSS frequencies are not incidentally captured by the ban, the new ban would provide that any equipment that is designed to transmit information that can be used to determine both the location of an RNSS receiver, and the local time at that location when that location is determined, cannot be RNSS jamming equipment.

These reforms will enable to us to facilitate the use of a wider range of beneficial technologies, including a wider range of RNSS repeaters, RNSS simulators, and pseudolites.[[6]](#footnote-7) While these devices – like any radiocommunications device – can cause interference if used inappropriately, they are not expressly designed to do so. While interference to RNSS services can be very serious, it is both appropriate and feasible that these and similar devices that are designed to transmit RNSS communications in areas with low-to-no RNSS coverage are regulated by the licensing system.

We will need to develop licensing, technical regulation and taxation arrangements that apply to these devices and amend several legislative instruments in the process. In response to our consultation on facilitating trials of RNSS repeaters, stakeholders expressed the view that long-term licensing of these and similar devices should be facilitated by apparatus licences. Our view is that, while the spectral denial characteristics of the devices notionally makes them compatible with a class licensing approach, apparatus licensing is more appropriate.

It is beneficial that deployments are licensed on a case-by-case basis, and that the locations of the deployments are recorded on the Register of Radiocommunications Licences (RRL). The draft technical guidelines that we are currently using to consider trials of RNSS repeaters will likely serve as the basis for a Radiocommunications Assignment and Licensing Instruction (RALI) for RNSS repeaters.

We intend to progress this licensing work over the second half of 2022 and into 2023. We understand that trials of RNSS repeaters proposed by state governments have experienced delays, principally due to COVID-19. While we undertake licence development work, we will continue to consider proposals and facilitate trials in road tunnels using assigned scientific licences.

### Permanent ban on RLAN and RPAS jamming equipment

#### Background

Radio Local Area Network (RLAN) devices are radiocommunications systems used to provide wireless communications in a local area. RLAN devices include Wi-Fi routers and devices that use the same parts of the spectrum. Over the last few years, consumer and commercial drones – also called remotely piloted aircraft systems (RPAS) or unmanned aerial vehicles (UAVs) – have become prominent users of this part of the spectrum. These devices are authorised by the [Radiocommunications (Low Interference Potential Devices) Class Licence 2015](https://www.legislation.gov.au/Details/F2022C00281) (the Class Licence).

The Australian civil aviation regulatory framework uses the term remotely piloted aircraft (RPA) and RPAS, and so we are aligning our terminology with that framework.

When we last consulted on the regulation of PMTS jamming equipment in 2010, a number of submissions expressed the view that permanent ban arrangements should extend to equipment designed to cause interference to Wi-Fi. Submissions noted that Wi-Fi and other devices authorised by the Class Licence were playing a key role in enabling innovation and broader social and economic connectivity. It was also noted that Wi-Fi was serving an offloading function to improve cellular network capacity.

Consideration of the submissions, evidence and risk environment at that time led us to form the view that the scope of permanent ban arrangements was proportional to those factors, and that ban arrangements should not extend to Wi-Fi.

Over the last 5 years, we have encountered a widening range of devices specifically designed to cause interference to RLAN devices and RPAS. We have also noted that RLANs and RPAS have played an expanding role within the Australian economy, and facilitate personal, business and – increasingly – security and safety services. They –and the spectrum on which they operate – are a source of significant public and economic value. Since 2010, applications and services like Wi-Fi calling and Wi-Fi hotspots have also become increasingly prevalent.

RLAN and RPAS jamming equipment can be used to cause inconvenience, or can seriously threaten safety, security and property (e.g., jamming an RPAS signal can cause the RPA to crash).

Some equipment that is designed to cause interference to RLANs and RPAS is also banned under the current RNSS and PMTS jamming equipment bans. However, there is a class of equipment that is designed to cause interference to RLANs and RPAS that is not subject to those other bans. Although this equipment is not expressly banned, it may still be difficult to possess and use legally. For example, operation of the equipment would likely breach Part 4.2 of the Act.

#### New arrangements

Although equipment that is designed to cause interference to RLAN and RPAS may be difficult to use and operate legally, we are of the view that the regulatory status of the equipment should be unambiguous, and that such equipment should also be a prohibited import under the Customs Regulations to further prevent it from entering the supply chain.

We are of the view that it is appropriate that permanent ban arrangements are put in place to manage the risks associated with this equipment.

The proposed Radiocommunications (RLAN and RPAS Jamming Equipment) Permanent Ban 2022 (Attachment C in the key documents contained in this consultation)would bea new instrument in the banned equipment and exemptions framework.

In considering the scope of the ban, we have taken the view that it would not be appropriate to impose a permanent ban that encompasses all equipment designed to jam RLANs in general. Principally this is because the Act contemplates the imposition of permanent bans on specified equipment. In principle, bans should be targeted at equipment designed to cause interference to specific services or devices. We are not aware of any evidence to indicate that there is jamming equipment designed to operate across all of the spectrum used by RLANs.

The ban would only apply to equipment that operates on one or more of the frequencies specified in the ban. The frequencies are those on which equipment designed to cause interference to RLANs and RPAS typically operates. If we become aware of new frequencies being targeted by RLAN and RPAS jamming equipment, we may consider adding those frequencies to the list.

The ban would provide that RLAN and RPAS jamming equipment is defined as equipment that operates on one or more of the relevant frequencies (whether or not it is capable of operating on another frequency) and is designed to do one or more of the following:

* have an adverse effect on radiocommunications
* block radio emissions between 2 or more RLAN devices (whether or not the equipment is designed to have other purposes or consequences)

block radio emissions between 2 or more RPAS devices (whether or not the equipment is designed to have other purposes or consequences).

RLAN device and RPAS device would also be defined in the ban.

As with the bans mentioned above, we also want to avoid scenarios where the ban is over-inclusive, or incidentally applies to legitimate communications devices. We also want to avoid any confusion about whether industrial, scientific and medical (ISM) equipment – which radiates electromagnetic energy into some RLAN and RPAS frequencies – is incidentally subject to the permanent ban.

The ban would provide that if the principal purpose of equipment is an ISM application, or to enable a person to use or access a carriage service, then that equipment is not RLAN or RPAS jamming equipment.

As a consequence of imposing a ban on RLAN and RPAS jamming equipment, we will be able to facilitate access to this equipment under the innovation and industry development framework.

## Exemptions

There are 2 exemption regimes under the new framework:

the permit-based innovation and industry development exemption framework under section 302 of the Act

individual exemptions made under section 27.

As an outcome of the review, we intend that there be 4 standing exemptions under section 27 that facilitate a range of law enforcement and related outcomes. We have already made one of those exemptions – the [Radiocommunications (Exemption – Corrective Services NSW) Determination 2021](https://www.legislation.gov.au/Details/F2021L01613). The other 3 exemptions, our proposed approach to them, and the outcomes they are designed to achieve, are set out below. Also discussed later is a new document intended to be published on our website.

### Exemption arrangements for visiting dignitaries

#### Background

When visiting dignitaries come to Australia, they are sometimes accompanied by a security delegation with electronic counter measure (ECM) capability. ECM devices are a range of electrical or electronic devices designed to disrupt or deceive radar, sonar and other detection systems like infrared and laser, as well as remote detonators. The devices can cause interference to radiocommunications.

The AFP and other state and territory police are involved in providing security for visiting dignitaries and working with the relevant visiting security teams.

In 2016, 2017 and 2018, we made the Radiocommunications (Australian Federal Police - Visiting Dignitary) Exemption Determination 2016, the Radiocommunications (Australian Federal Police – Visiting Dignitary) Exemption Determination 2017 and the Radiocommunications (Australian Federal Police – Visiting Dignitary) Exemption Determination 2018 (collectively, the visiting dignitary exemptions) under section 27 of the Act. The instruments were drafted to self-repeal, generally after 2 weeks, to coincide with the departure from Australia of the relevant visiting dignitary.

#### New arrangements

The proposed Radiocommunications (Exemption – Visiting Dignitaries) Determination 2022(Attachment D in the key documents contained in this consultation), if made, wouldtake advantage of the new flexibility available to the ACMA under subsection 27(2A), to put into place exemption arrangements that will make visiting dignitary operations more efficient for both the ACMA and the AFP.

Unlike the event-specific visiting dignitary exemptions, the Radiocommunications (Exemption – Visiting Dignitaries) Determination 2022would be a standing exemption and would be in force for 5 years.

However, the legal relief provided by the exemption would only be enlivened by the making of an administrative decision by the ACMA in the form of a notifiable instrument. In practical terms, this would mean that, when the AFP (or the police force of a state or territory, or a person performing a function or duty in relation to the defence, security or international relations of Australia) becomes aware of a need to rely on the exemption (i.e., a visit to Australia by a visiting dignitary), it can approach the ACMA. We would then enliven the exemption by making a notifiable instrument.

The notifiable instrument would essentially function like a permit and allow us to be much more responsive to visiting dignitary operations. The notifiable instrument would specify the relevant visiting dignitary and a period of no more than 14 days for which the notifiable instrument applies. Registration of a notifiable instrument on the Federal Register of Legislation would provide transparency for stakeholders.

One of the issues with the previous exemptions has been that the timeframes and processes associated with instrument-making greatly reduce the amount of time available for consultation with stakeholders that may be strategically or operationally affected by the use of ECM devices, which include mobile network operators. The new process would give the ACMA and stakeholders more time to confer on the proposed notifiable instrument and take any appropriate operational steps prior to its making and registration.

### Exemption arrangements for counter-RPAS operations

#### Background

Rapid innovation in the RPAS technology environment has led to RPAS becoming increasingly easy to use and access. The global uptake of RPAS across a range of industries, including retail manufacturing, agriculture, defence and health, has the capacity to enhance a wide range of existing services and enable new applications. But with the prevalence and accessibility of inexpensive RPAS comes the potential for RPAS to be used for malicious purposes.

Counter-RPAS technologies include:

scanners that use radar, audio, visual, infrared or radiofrequencies to detect RPAS

geofences that establish virtual barriers to prevent RPA from entering certain locations

RPAS jamming equipment that actively interfere with RPAS radiocommunications.

RPAS jamming equipment is designed to operate on the same frequencies used by RPAS and interfere with the control signals between an RPA and its operator, and other data links. Disrupting these communications commonly results in the RPA returning to its point of origin or landing on the spot. As a result of the new permanent ban arrangement discussed above, RPAS jamming devices would be more comprehensively banned.

In mid-2020, we consulted on, and made, the [Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020](file:///C%3A%5CUsers%5Cawallac%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CF5S80M9L%5CRadiocommunications%20%28Police%20Forces%20%E2%80%93%20Disruption%20of%20Unmanned%20Aircraft%29%20Exemption%20Determination%202020%20%28legislation.gov.au%29). This exemption facilitates access to and use of counter-RPAS capability by state and territory police and the AFP. The exemption was intended to facilitate use of an interim capability, recommended by the then Council of Australian Governments, while long term arrangements were considered by the Department and other stakeholders.

#### New arrangements

Since we made the exemption, the Department has been considering potential changes to enable the effective implementation of security measures related to RPAS, including improved management of counter-RPAS capability approvals.

While this work is ongoing, the need for exemption arrangements remains, and the Australia-New Zealand Counter-Terrorism Committee (ANZCTC) has expressed its support for the current arrangements to remain in place.

The proposed Radiocommunications (Exemption – Remotely Piloted Aircraft Disruption) Determination 2022 (Attachment E in the key documents contained in this consultation)essentially remakes the current instrument and extends the existing arrangements for another 5 years.

During that time, we will continue to support law enforcement and ANZCTC in relation to counter-RPAS capability and continue to work with the Department and other stakeholders on legislative and policy analysis and reform in this space.

### Exemption arrangements for police use of ECM to deal with improvised explosive devices (IEDs)

#### Background

IEDs are a serious threat to the safety and security of the public and can be detonated remotely via radiocommunications transmitters. ECM devices can be used to thwart remote detonations of IEDs by causing interference to radiocommunications.

The Radiocommunications (Prohibited Devices) (Use of Electronic Counter Measures for Bomb Disposal) Exemption Determination 2010has facilitated access to, and use of, ECM capability by Australian law enforcement and related persons for over a decade now, and it will sunset in April 2023.

#### New arrangements

The proposed Radiocommunications (Exemption—Bomb Disposal Electronic Counter Measures) Determination 2022 (Attachment F in the key documents contained in this consultation)would repeal and replace the current exemption.

The remade instrument is intended to continue to support law enforcement agencies in their ECM operations and would largely replicate the legal scope of the old exemption.

In reviewing the current exemption and its performance over the last decade, we have taken the opportunity to remove outdated, unnecessary and overly complex requirements with a view to making it easier for police to conduct their operations and to comply with the exemption.

We have, however, inserted new conditions similar to those included in the counter-RPAS arrangements that would require police and other persons relying on the exemption to create and maintain records relating to their activities – and to make those records available to the ACMA upon request.

One important aspect of the ECM arrangements has been the procedures relating to police interactions with the ACMA and stakeholders whose licensed radiocommunications devices may be adversely affected by ECM devices. These interactions focus on police providing licensees operating radiocommunications devices with alerts before and after ECM devices are activated.

These procedures are set out in the Radiocommunications Advisory Guidelines (Use of Electronic Counter Measures for Bomb Disposal Activities 2010 (ECM RAG) made under section 262 of the Act. The ECM RAG has been very successful, and we consider that, with some modifications, the content of this document can serve a broader purpose in the exemption regime beyond the ECM exemption. We are proposing to repeal the ECM RAG and replace it with a document that relates to exemptions more broadly, and which provides general information and transparency for persons operating under exemptions and stakeholders. There is more information on this immediately below.

### More transparency and better information for users and stakeholders

#### Background

Stakeholders whose licensed radiocommunications devices may, in certain circumstances, be adversely affected by use of banned equipment under exemptions, indicated that the ECM RAG is a useful document, from both operational and transparency perspectives. Some stakeholders suggested that all exemptions should be supported by similar arrangements.

We also noted in our May 2020 consultation paper that some stakeholders who may benefit from exemptions under section 27 have conveyed that they are unsure how to approach or engage with the ACMA on proposed exemptions.

#### New arrangements

Taking into consideration stakeholder comments, we have prepared the *Use of banned equipment under the Radiocommunications Act 1992 by law enforcement and related persons – Information for users and stakeholders* document(Attachment G in the key documents contained in this consultation).

This document draws on some of the content contained in the ECM RAG and makes it more generally applicable to exemptions. It will provide information for law enforcement operating under exemptions, and transparency for stakeholders, on how the risks associated with the use of banned equipment can be managed under exemptions.

The document could also be used by persons seeking a section 27 exemption to better understand the expectations of the ACMA in respect of how risks associated with banned equipment should be managed. This document could assist police forces in ensuring that activities involving banned equipment have minimal adverse impact on licensed radiocommunications devices without unduly compromising their operational objectives.

Following consideration of comments received in response to this consultation, we propose to publish this document on our website, and repeal the ECM RAG.

# Instruments being allowed to sunset and transitional matters

## Sunsetting instruments

There are 3 exemptions made under section 27 of the Act that we are not proposing to remake. We intend to let them sunset, although depending on the operational needs of the persons to whom they apply, we may repeal them earlier.

### Radiocommunications (Public Mobile Telecommunications Services Surveillance Device) Exemption Determination 2011

This exemption facilitates use of a data surveillance device by the New South Wales Crime Commission (NSWCC). NSWCC has advised that it does not wish for this exemption to be remade. If not repealed earlier, the instrument will sunset in April 2023.

### Radiocommunications (PMTS Jamming Devices – Visiting Forces and Suppliers) Exemption Determination 2011 and Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination 2014

These exemptions are principally intended to exempt certain acts and omissions involving banned equipment carried out by visiting forces and suppliers to Defence. These exemptions were required to supplement legislative exemptions within the Act applicable to Defence.

Amendments to sections 24 and 26 of the Act introduced by the Modernisation Act have largely rendered these exemptions superfluous. If not repealed earlier, these instruments be allowed to sunset in 2023 and 2025, respectively.

## Transitional matters

The Radiocommunications (Exemption – Corrective Services NSW) Determination 2021, Radiocommunications (PMTS Jamming Devices – Visiting Forces and Suppliers Exemption Determination 2011 and the Radiocommunications (Prohibited Device) (RNSS Jamming Device) Exemption Determination 2014 contain references to the current permanent bans that are being repealed and replaced.

To preserve the legal operation of these instruments, we intend to make the Radiocommunications (Exemptions) Amendment Determination 2022 (No. 1) (Attachment H in the key documents contained in this consultation).This instrument would make minor, consequential changes to the 3 exemptions and would not change their legal scope.

# Next steps

In implementing the outcomes of the review and following consideration of responses received to this consultation paper, we will:

* repeal the ECM RAG and other instruments being replaced by new permanent bans
* update the compliance and general information on our website relating to permanent bans, and application material relating to the innovation and industry development framework
* create new information on our website about exemptions, and publish the *Use of banned equipment under the Radiocommunications Act 1992 by law enforcement and related persons – Information for users and stakeholders* document
* pursuant to subsections 172(3) and (4) of the Act, publish notices on our website about permanent bans
* work with persons to whom exemptions apply to implement any operational matters

undertake a body of licensing development work to facilitate RNSS retransmission devices that were previously banned.

# Invitation to comment

## Making a submission

We invite comments on the issues set out in this consultation paper and the draft instruments and information paper at Attachments A–G in the key documents contained in this consultation.

[Online submissions](https://www.acma.gov.au/have-your-say) can be made by uploading a document. Submissions in PDF, Microsoft Word or Rich Text Format are preferred.

Submissions by post can be sent to:

The Manager

Spectrum Licensing Policy

Australian Communications and Media Authority

PO Box 13122 Law Courts

Melbourne Victoria 3000

The closing date for submissions is **COB, Thursday 4 August 2022**.

Consultation enquiries can be emailed to SpectrumLicensingPolicy@acma.gov.au.

#### Publication of submissions

We publish submissions on our website, including personal information (such as names and contact details), except for information that you have claimed (and we have accepted) is confidential.

Confidential information will not be published or otherwise released unless required or authorised by law.

#### Privacy

View information about our policy on the [publication of submissions](https://www.acma.gov.au/publication-submissions), including collection of personal information during consultation and how we handle that information.

Information on the *Privacy Act 1988,* how to access or correct personal information, how to make a privacy complaint and how we will deal with any complaints, is available in our [privacy policy](https://www.acma.gov.au/privacy-policy).

1. Formerly referred to as the prohibitions and exemptions framework. [↑](#footnote-ref-2)
2. Before the Modernisation Act commenced, the ACMA could make prohibition declarations under the now-repealed section 190 of the Act. We may also impose interim, or ‘short-term’ bans on equipment under section 167 of the Act. [↑](#footnote-ref-3)
3. The Act also contains legislative exemptions. Sections 24, 25 and 26 provide that the Act, or specified parts thereof, do not apply generally, or in certain circumstances, to the Defence Force, the Department of Defence, and certain other agencies, such as the Australian Security Intelligence Organisation. [↑](#footnote-ref-4)
4. Made under section 262 of the Act. [↑](#footnote-ref-5)
5. Carriage service has the meaning provided by the *Telecommunications Act 1997*. [↑](#footnote-ref-6)
6. Pseudolites (‘pseudo-satellites’) are ground-based transmitters of RNSS-like signals to aid in local, precision navigation. Like repeaters or simulators, pseudolites are intended to improve the availability of positioning services in areas of challenging radio propagation, such as indoor environments, urban canyons, tunnels, and aircraft hangars. [↑](#footnote-ref-7)