Review of banned equipment and exemptions framework

Response to submissions

March 2023

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Executive summary

In May 2020, we initiated a review of the banned equipment and exemptions framework under the Radiocommunications Act1992.[[1]](#footnote-2)

The framework involves the ACMA exercising statutory powers to ban specified types of equipment, and to define circumstances where certain sections of the Radiocommunications Act do not apply. The ACMA does so by making permanent bans under section 172, 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 10 instruments in the framework were due to sunset in 2023, with further instruments sunsetting in 2025.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts was progressing consideration of legislative reforms to the Radiocommunications 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.

In May 2020, 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 then held a number of meetings and workshops with stakeholders.

In July 2022, we released a [consultation paper](https://www.acma.gov.au/consultations/2022-07/new-arrangements-banned-equipment-and-exemptions-framework-consultation-232022) that described our proposed outcomes for the review, and sought views on instruments and arrangements that would complete the review. We received 8 submissions to that consultation.

In this paper, we summarise submissions received to the July 2022 consultation paper, respond to submissions that offered views on instruments and arrangements, and note changes made to the instruments. The outcomes of the review are also summarised.

# Background: 2020 consultation

We received 26 submissions to the issues paper we released in May 2020, from:

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

Vicom.

Stakeholders broadly agreed that the framework was essential and performing well. They recognised that exemptions play an important role in the overall radiocommunications regulatory framework and enable policy outcomes in other portfolios. 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.

Some stakeholders submitted 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 radiocommunications devices that could notionally be authorised under the Radiocommunications Act’s licensing regime 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. These submissions informed our policy approach and preparation of draft instruments.

# Response to submissions to the July 2022 consultation

We received 8 submissions to our July 2022 consultation paper on draft instruments and proposed new arrangements for the framework. We received submissions from:

Airservices Australia

AFP

AMTA

Department 13

DroneShield

Optus

Telstra

TPG Telecom.

Submissions that were not made in confidence are published on our website.

The following chapters summarise and respond to submissions received to the July 2022 consultation.

# Overall policy approach and regulatory environment

Permanent bans protect consumers, businesses, and network and service providers from the potentially adverse effects of equipment designed to cause interference to radiocommunications.

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.

For 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. These include 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.

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

* continue to ban equipment that is designed to interfere with socially, economically and strategically critical radiocommunications services – that is, public mobile telecommunications services (PMTS) and the radionavigation-satellite service (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 reviewed exemption regime has been to:

* use administrative powers creatively and proportionately, by making exemptions that provide for delegated decisions on operational matters, or by creating permit-like administrative arrangements
* simplify conditions that have become overly complex over time, or that 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.

## What stakeholders told us

Stakeholders agreed that the banned equipment and exemptions framework plays an important role in their industry sector or policy portfolio.

Stakeholders uniformly conveyed that the banned equipment regime was critical to, or assisted in, managing the risk of serious interference to radiocommunications.

For example, aviation stakeholders highlighted that the international aviation sector has adopted RNSS as the enabling technology to support safety, efficient and accessible aeronautical navigation. They submitted that radiofrequency transmissions that deny access to RNSS through jamming, or that create signals through repeaters, translators, simulators or spoofers, can be very dangerous, and can adversely affect aviation operations.

Some stakeholders conveyed that the exemption regime is a key enabler for their business, function or duty. Some of these stakeholders noted that, although exemptions are typically used to authorise use of equipment that is banned, and therefore involve some inherent risk, conditions in which banned equipment is actually operated typically mean that the public benefit associated with that use is significantly greater to any actual risks incurred.

Stakeholders that do not rely on the exemption regime in this way recognised that, where the risks of using banned equipment under an exemption can be sufficiently managed, the use of that equipment to deal with threats to safety and security delivers significant public benefit.

In terms of our approach to the review, stakeholders expressed support for the principles we used to develop the new arrangements for the framework, including the general objectives of harmonisation and the use of powers incorporated into the Radiocommunications Act by the Modernisation Act.

Telecommunications stakeholders conveyed that the banned equipment regime remains crucial to the operation of licensed radiocommunications, and fundamental to ensuring the compliant operation of radiocommunications devices and equipment across Australia. Those stakeholders highlighted that mobile network operators are tasked with a range of responsibilities to protect national critical infrastructure, ensure network security and integrity, and provide access to emergency services, and SMS-based emergency alerts under the National Emergency Warning System (NEWS). Those stakeholders noted that devices that cause interference can jeopardise their ability to meet these responsibilities and, that in extreme cases, disruption to mobile networks can cause financial, health and security harms.

## Our response

We consider the banned equipment and exemptions framework to be a key element of the overall radiocommunications regulatory framework. Our management of the banned equipment and exemption regimes is guided by the object of the Act, and our review has focused on ways that both regimes can promote the long-term use of the spectrum for commercial and non-commercial uses.

Stakeholders place different levels of importance on the banned equipment regime or the exemption regime, depending on their industry or policy portfolio, and there are often strong, and sometimes competing, views about how the ACMA should regulate specific parts of the overall framework.

In promoting the object of the Act, there is a need for us to strike a balance between these views, and to ensure that both regimes operate optimally in managing the risk of interference while facilitating beneficial technologies.

In reviewing the framework, we have also developed a set of principles and an approach that guides our management of the overall framework, which has not been attempted previously. We see these principles as an enduring part of the framework to which we can return when considering new proposed exemptions, and new technologies.

Our review has sought to ensure that the framework continues to provide regulatory certainty for those who rely on permanent bans to keep dangerous equipment out of the supply chain, and that it can anticipate future developments in technology and policy.

Exemptions continue to play an important role in facilitating public safety outcomes, and are also being relied on to deal with emerging threats, such as those posed by drones. COVID-19 related disruptions to supply chains have also placed a renewed focus on domestic capability development, and the new [innovation and industry development framework](https://www.acma.gov.au/innovation-and-industry-development-exemption-framework) is already playing an important role in assisting Australian businesses.

# Scope and operation of permanent bans

In our July 2022 consultation paper, we conveyed that, when imposing permanent bans on equipment, it is desirable that the equipment is clearly defined in a way that applies consistently and anticipates changes in technology. Over the last 10 years, the existing bans had 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.

When we initiated the review, there were 2 existing permanent bans:

the Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011(the PMTS jammer ban), which is intended to manage the risks associated with public mobile telecommunications service (PMTS, that is, mobile phone) jamming equipment

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

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

We consider that 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 encountered more devices that are captured by the bans in an incidental way. We also encountered a class of equipment designed to cause interference that is sub-optimally regulated.

Both permanent bans were due to sunset, and the review presented us with the opportunity to reconfigure them to be fit-for-purpose now and into the future.

Our review found that the definition of the equipment subject to the RNSS jammer ban was inadvertently applying to range of beneficial technologies designed to retransmit, or generate simulated, RNSS signals in areas of low-to-no RNSS coverage.

One of the key changes that we proposed to make to the permanent ban regime was to target permanent bans towards equipment that is expressly designed to have an adverse effect on radiocommunications and cause interference, rather than equipment that might only potentially cause interference if used inappropriately or in a certain context.

We proposed that this would reduce instances of ‘false positives’ (that is, fewer ‘legitimate’ devices would be caught by bans) and would allow us to unambiguously exclude a range of publicly beneficial technologies from the scope of the permanent ban regime.

We proposed that the definition of RNSS jamming equipment be reconfigured to ensure that the ban would not apply to a class of RNSS retransmission and transmission equipment, variously called repeaters, simulators and pseudolites. In excluding them from the ban, it is possible for these devices to be regulated under the licensing system

Taking this approach would also allow us to construct permanent bans that 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, without incidentally banning low interference potential devices (LIPDs)[[2]](#footnote-3) that might inadvertently cause interference when operating in parts of the spectrum that are highly shared, and are generally subject to our ‘no interference, no protection’ policy.[[3]](#footnote-4)

We proposed to repeal the 2 existing permanent bans, and replace them with more targeted instruments that continued to ban devices designed to cause interference to PMTS and RNSS. We also proposed to make a new ban applying to equipment designed to cause interference to radio local area network (RLAN) devices and drones (or Remotely Piloted Aircraft Systems or RPAS). We were also careful to ensure that a permanent ban on RLAN and RPAS jamming equipment would not apply to industrial, scientific, medical and domestic equipment, such as microwave ovens, that share the spectrum with RLANs and RPAS.

In July 2022, we consulted on 3 separate draft permanent ban instruments. Since consulting on those instruments, we have considered that it would be easier for stakeholders if there was a single instrument imposing a permanent ban on PMTS jamming equipment, RNSS jamming equipment, and RLAN and RPAS jamming equipment.

## What stakeholders told us

In submissions to our consultation paper, stakeholders expressed the view that there was an ongoing need for both the PMTS jammer ban and the RNSS jammer ban to remain in force.

We received diverse, and often competing, views about the scope and operation of permanent bans.

Some stakeholders submitted that bans in general, or some bans in particular should be defined very precisely to exclude devices that have lower risk profiles, and that permanent bans could contemplate software or selective targeting technologies that can reduce interference risk.

Several stakeholders expressed the view that permanent bans should not be refined in the manner proposed, but should instead continue to apply to equipment that may not necessarily be designed to cause interference, but might still be inadvertently capable or likely to cause interference, or anything that may be likely to have the effect of jamming communications. Stakeholders gave different reasons for holding this view.

Some stakeholders conveyed that it would be preferable for permanent bans to remain broad in their scope, and that individual devices could be carved out of bans as needed, or individually authorised by exemptions on a case-by-case basis. One stakeholder submitted that certain devices should only be carved out of bans after they had been subject to rigorous operational testing (and noted that use of PMTS jamming equipment in NSW correctional centres was authorised on an ongoing basis after going through multiple trials covered by successive exemption determinations). There was a view that, in narrowing the scope of the permanent bans, those instruments would no longer apply to devices like garage door openers and sensor lights that, while not designed to cause interference, can do so in some cases.

There was also a view that narrowing the scope of the permanent bans to only apply to equipment designed to cause interference would remove incentives for manufacturers, designers and importers to ensure that equipment will not inadvertently cause interference.

Telecommunications stakeholders expressed the concern that narrower bans could place greater burden on industry, should there be a proliferation of devices that inadvertently cause interference, and that the narrowed scope could prompt the ACMA to license such devices, potentially placing significant burden on the ACMA’s interference management operations. Those stakeholders also submitted that, from a compliance perspective, is more difficult to prove that a device is designed to cause interference, and easier to prove that it is likely to cause interference.

Some stakeholders also conveyed a concern that the drafting of some of the permanent bans might have unintended consequences. In our draft permanent bans, we proposed that an item of equipment could not be PMTS jamming equipment or RLAN and RPAS jamming equipment if its principal purpose was to allow a person to use or access a carriage service to be supplied to the public. Some stakeholders submitted that this drafting could enable someone to seek to provide a communications network while simultaneously causing interference.

We received diverse views about our proposal to impose a ban on RLAN and RPAS jamming equipment. There was a view that a ban on this equipment would need to be careful not to inadvertently apply to devices that might cause interference to devices operating in shared, ‘no interference, no protection’ spectrum, but are not actually be designed to cause interference. There was also a view that imposing a permanent ban on equipment designed to cause interference to RLAN and RPAS could also limit access to that equipment for publicly beneficial uses, and that a licensing framework applying to that equipment would be a better regulatory approach.

There was a view that devices used to provide RNSS coverage in tunnels and areas with low-to-no RNSS coverage are publicly beneficial, and while they should continue to be banned in a general sense, their use would be unlikely to cause interference to aviation services.

## Our response

We note stakeholder views that permanent bans should be drafted to exclude ‘low risk’ jamming devices, or jamming devices used by law enforcement and related entities to counter threats, rather than to cause them. From a regulatory perspective, it is usually easy to identify when a device is designed to cause interference; it is, however, very difficult to distinguish between jamming equipment intended for law enforcement purposes and jamming equipment intended to be used to cause mischief or harm. For example, some banned equipment would be considered to be electronic warfare equipment, and in that context, both sides of a conflict may be using the same or similar jamming equipment. While we have narrowed the scope of the permanent bans to focus on equipment that is expressly designed to cause interference, it would be very difficult to craft a permanent ban that distinguished between highly context-based users or uses of the banned equipment, and such a ban would likely be very ineffective.

Even if such ‘low risk’ jamming equipment were not banned, it would still be difficult to use that equipment without breaching the Act, which also does generally not distinguish between ‘good’ and ‘bad’ interference.

We note that, while bans continue to be comprehensive and, for some stakeholders, render some of their desired commercial operations illegal, there are now more opportunities for industry and others to access banned equipment under the innovation and industry development framework.

We note stakeholder views that it is a valid regulatory approach to impose a very broad ban, from which individual types of devices might be carved out on a case-by-case basis. This is broadly the approach that has been taken over the last decade (by carving out certain devices used on aircraft from the PMTS jammer ban, and carving RNSS repeaters out of the RNSS jammer ban). Our view is that continued use of this approach is likely to result in bans that are overly complex, and could produce situations where devices that depart in very minor ways from a carved-out device without posing any serious risk of interference can be inadvertently banned. Our view is that it is preferable to adopt a regulatory approach based on the principle that if a device is not designed to cause interference, ordinarily it should not be banned.

We do not expect that day-to-day incidents of interference will increase as a result of refining the scope of permanent bans. Firstly, the class of devices that would be excluded from the bans are not designed to cause interference. Second, and relatedly, we are proposing that any interference risk posed by such radiocommunications devices would be managed by the licensing system. Radiocommunications devices that are not designed to cause interference (but, like any transmitter, may potentially cause interference in certain contexts) can be appropriately managed by the licensing system (and, in cases similar to our proposed regularisation of RNSS repeaters, by reliance on specific standards).

From a compliance perspective, and in our experience, it is usually not difficult to identify whether a device is designed to cause interference. For example, such devices often do not communicate any data on bands that are used for communication (such as PMTS bands), do not establish a two-way link with external devices, operate at higher powers than is useful or necessary in most contexts, or do not incorporate a radiocommunications receiver. By contrast, whether a device is *likely* to cause interference is often dependent on operational context: almost any device used to communicate information in one context could very easily cause interference if operated in another context.

A specific concern was raised that more targeted bans would cease to apply to devices like garage door openers or sensor lights (which could inadvertently cause interference if they do not comply with ACMA equipment rules, or operate on frequencies not allocated for their use in Australia). The ACMA does not currently intend that the existing permanent bans apply to these devices, and would be very unlikely to take compliance action on the basis that these were items of banned equipment. It is intended, and preferable, that such devices are managed by the Radiocommunications Equipment (General) Rules 2021, and by sections 46 and 47 of the Radiocommunications Act (operation, and possession for the purpose of operation, of an unlicensed radiocommunications device) and compliance levers relating to interference in Part 4.2. We consider the express exclusion of such devices from the potential scope of a permanent ban beneficially focuses the permanent ban regime on devices that are specifically designed to cause interference.

We do not consider that more targeted bans will remove incentives to build high-quality equipment: our device supply regulations are the principal way that we regulate device quality, and we do not rely on the banned equipment regime to manage things like electromagnetic compatibility, out-of-band emissions or compliance with standards.

Non-compliant devices that cause interference could also be appropriately managed by imposing an interim ban under section 167, or by a compulsory recall of equipment under a recall notice made under section 183.

We have considered the concern expressed by stakeholders about the potential unintended consequences associated with permanent bans that provide that an item of equipment cannot be banned equipment if it allows a person to use or access a carriage service, and the specific concern that this could be exploited by those seeking to provide a communications service while simultaneously causing interference. We note that a device operated in this way would still be causing interference to radiocommunications and, therefore, it does not matter whether the item of equipment is or is not banned equipment. However, we note stakeholder concerns that there may be unintended consequences associated with the initial drafting. We have amended the definitions of PMTS and RLAN and RPAS jamming equipment to provide that the bans will not apply to two-way communication equipment.[[4]](#footnote-5) This is intended to ensure that equipment that is intended to provide a licensed service that facilitates two-way communication with a user’s device can provide that service under a licence in circumstances where it will not cause interference. This approach provides regulatory certainty for the ACMA and for those seeking to deploy such equipment, where it may be otherwise be ambiguous as to whether a permanent ban applies. It will also ensure that such equipment is not automatically prevented from being imported into Australia.

A licence under the Act cannot generally be used as a direct substitute for an exemption. A licence cannot exempt a person from causing interference to radiocommunications, and a licence cannot be used to authorise possession, operation, supply or offer of supply of banned equipment.

We also note that the innovation and industry development framework can *only* facilitate access to jamming equipment that is subject to a permanent ban; it *cannot* facilitate access to devices that are designed to cause interference, but are not captured by a ban. Imposing a permanent ban on RPAS and RLAN jamming equipment therefore has the secondary and beneficial effect of facilitating lawful access to equipment under the innovation and industry development framework that would otherwise be entirely inaccessible.

## Outcomes

The Radiocommunications (Jamming Equipment) Permanent Ban 2023 (the permanent ban) will repeal and replace the current PMTS jammer ban and the RNSS jammer ban, and will also impose a new ban on RLAN and RPAS jamming equipment.

The definitions of RNSS jamming equipment will exclude a range of RNSS transmission and retransmission technologies from the ban. We note stakeholder interest in the wider use and regulation of such technologies, and our next steps are set out at the end of this document.

We carefully considered stakeholder views about the scope and operation of permanent bans.

We formed the view that the equipment specified in the permanent ban will continue to ensure that high-risk jamming equipment that is specifically designed to have an adverse effect on radiocommunications and cause interference remains banned, and that the ban on RLAN and RPAS jamming equipment will clarify the regulatory status of this equipment.

The exclusion of two-way communication equipment from the bans on PMTS jamming equipment and RLAN and RPAS jamming equipment will ensure that devices principally intended to provide a usable communications link are not incidentally caught by the ban. Any such equipment would still require a licence to be legally operated or possessed for the purpose of operation. Similarly, the exclusion of industrial, scientific and medical equipment from the scope of the ban on RLAN and RPAS jamming equipment will ensure that equipment that shares the spectrum with RLANs and RPAS, but which is not used for radiocommunications, is not inadvertently subject to the ban.

# Scope and operation of exemptions

In our July 2022 consultation, we noted that exemptions that support law enforcement enable use of the spectrum for non-commercial, publicly beneficial outcomes. We considered how we could enhance the exemptions regime to assist law enforcement in delivering those outcomes.

Historically, decision-making for 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 those operating under them to use their judgement and discretion, yet narrow enough to clearly define the scope of the legal relief from the Act. The instrument-making process, as opposed to administrative decision-making processes, is less geared towards facilitating frequent or rapid changes.

Another challenge that we and stakeholders identified was that, before the Modernisation Act, the exemption powers available to the ACMA applied to a narrow group of users. 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

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 where section 27 does not apply. In most cases, the interest expressed in accessing banned equipment has been for the purpose of domestic manufacturing, research and development (R&D), or trialling a new technology that was banned – something that the exemption regime could not easily facilitate before the Modernisation Act.

Gradual changes in technology have seen law enforcement, and a widening range of public and private entities, approach us to use 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.

The changes to the Radiocommunications Act introduced by the Modernisation Act have created opportunities for us to make the exemptions regime more flexible. The regime can apply to a wider range of users, and we can be more responsive in our decision‑making.

The insertion of subsection 27(2A) into the Radiocommunications 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 users of exemptions.

The new exemption power at section 302 of the Radiocommunications 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 widely, and are principally intended to facilitate innovation and industry development opportunities. These are likely to involve manufacturing, R&D and product development activities.

Our overall approach to implementing the reviewed 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.

When we initiated the review in 2020, there were 8 exemption determinations made under section 27 of the Act. The reviewed framework we proposed would comprise 4 exemptions made under section 27, a new permit-based system for manufacturing and R&D (the innovation and industry development framework) facilitated by an exemption made under section 302, and an information document on exemptions for law enforcement and stakeholders.

In July 2022, we sought view on drafts of the:

* Radiocommunications (Exemption – Bomb Disposal Electronic Counter Measures) Determination 2023 (the ECM exemption)
* Radiocommunications (Exemption – Visiting Dignitaries) Determination 2023 (the visiting dignitaries exemption)
* Radiocommunications (Exemptions) Amendment Determination 2023 (No.1) (the amendment exemption)
* Radiocommunications (Exemption – Remotely Piloted Aircraft Disruption) Determination 2022 (the RPAS disruption exemption)
* *Use of banned equipment under the Radiocommunications Act 1992 by law enforcement and related persons – Information for users and stakeholders* (the *Information for users* document).

### The ECM exemption

We proposed that the ECM exemption repeal and replace the Radiocommunications (Prohibited Devices) (Use of Electronic Counter Measures for Bomb Disposal) Exemption Determination 2010(the 2010 exemption), which facilitates access to, and use of, ECM capability by Australian law enforcement in order to deal with Improvised Explosive Devices (IEDs). [[5]](#footnote-6) IEDs are a serious threat to the safety and security of the public and can be detonated remotely via radiocommunications transmitters.

In reviewing the 2010 exemption, we proposed 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. However, we proposed to insert new conditions 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. We proposed similar record-keeping requirements for the RPAS disruption exemption.

We also proposed that the interference management procedures relating to the 2010 exemption, the Radiocommunications Advisory Guidelines (Use of Electronic Counter Measures for Bomb Disposal Activities 2010 (ECM RAG) made under section 262 of the Act, be made more generally applicable across section 27 exemptions. We updated the content of the ECM RAG, prepared new content, and collated this content in the *Information for users* document.

### The visiting dignitary exemption

When visiting dignitaries come to Australia, they are sometimes accompanied by a security delegation with ECM capability. 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 under section 27 of the Act

We proposed that the visiting dignitary exemption would take advantage of the new flexibility available to the ACMA under subsection 27(2A) of the Act, to put into place exemption arrangements that will make visiting dignitary operations more efficient for both the ACMA and the AFP.

Unlike the previous visiting dignitary exemptions in 2016, 2017 and 2018, the visiting dignitary exemption would be a standing exemption and would be in force for 5 years. However, the legal relief provided by the exemption would only be triggered 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 (that is, a visit to Australia by a visiting dignitary) it can approach the ACMA, which could then trigger the exemption by making a notifiable instrument.

We proposed that a 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 (FRL) would provide transparency for stakeholders.

In our review, we considered that one of the issues with the previous visiting dignitary 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.

### The amendment exemption

This instrument effects minor amendments to 2 instruments that are being allowed to sunset (the Radiocommunications (PMTS Jamming Devices – Visiting Forces and Suppliers) Exemption Determination 2011 and the Radiocommunications (Prohibited Device) (RNSS Jamming Device) Exemption Determination 2014, and one other instrument in the framework (the Radiocommunications (Exemption – Corrective Services NSW) Determination 2021). The amendments ensure legal operation of these instruments by updating terminology.

### The RPAS disruption exemption

We made this exemption in September 2022, and provided a response to stakeholder views on the instrument in the [outcomes statement published on our website](https://www.acma.gov.au/consultations/2022-07/new-arrangements-banned-equipment-and-exemptions-framework-consultation-232022)

### The Information for users document

Over the course of the review, stakeholders whose licensed radiocommunications may 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 eligible for exemptions under section 27 conveyed that they are unsure how to engage with the ACMA on proposed exemptions.

Taking into consideration stakeholder comments, we proposed that the *Information for users* document draw on the content in the ECM RAG and make it more generally applicable to exemptions made under section 27 of the Act. It would also 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 about 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.

## What stakeholders told us

We received views on proposed exemptions to be made under section 27 of the Act, and also on the innovation and industry development framework.

We received some specific comments on the *Information for users* document.Telecommunications stakeholders supported the document, especially the information it contains about notification procedures (whereby law enforcement share operational information with certain radiocommunications licensees). Those stakeholders noted that, while the document would not be enforceable, it could still be effective if it was formally issued as a radiocommunications advisory guideline under section 262 of the Act. In this case, it could serve to support the ACMA in its decision-making for any dispute about radiocommunications interference to help determine who may be at fault.

We received some specific comments about the proposed standardised record‑keeping obligations for those operating under exemptions. There was a view that exempted persons should be required to collect more detailed information than was proposed, that the reasons for the ACMA requesting records should be specified, and information collected by the ACMA under powers to request records of law enforcement bodies relying on exemptions could be made available to licensees.

Several submissions offered views on the innovation and industry development framework. Stakeholders expressed support for the framework and supported the current methods used to manage risks associated with operation of banned equipment. One stakeholder noted that it was important that anyone supplying banned equipment to law enforcement and Defence has a clear and accessible path to acquiring an exemption, and also that the ACMA specifically provide for R&D and innovation of equipment intended for those users. However, there was also a view that anyone unable to access the full legal relief available under section 27 of the Radiocommunications Act would need instead to rely on the innovation and industry development framework, which can only facilitate operational/open-air testing of banned equipment in specific circumstances.[[6]](#footnote-7)

Stakeholders offered comments on information sharing between exempted persons and radiocommunications licensees who may be adversely affected by the operation of banned equipment under exemptions. Specific views were offered on notification arrangements, whereby exempted persons make the ACMA and licensees aware of certain activities involving banned equipment (such as when and where banned equipment may be operating, and additional technical and operational information).

Stakeholders conveyed that notification arrangements played an important role in interference management, and that real-time communication (wherever possible) is desirable. There was a view that, where notification arrangements exist on an inter-agency basis, they are very effective, and should be extended to authorisation of operational/open-air testing under the innovation and industry development framework.

One stakeholder indicated that further authorisation of RNSS retransmission technologies should be accompanied by a consultation process.

A stakeholder noted our intention to consult with relevant stakeholders before making a notifiable instrument to trigger the effect of the visiting dignitaries exemption and sought clarification of how long we intended to consult.

A question was also raised as to why the ECM exemption would need to apply to potential contractors to police forces.

Some stakeholders cited trials of PMTS jamming devices in NSW correctional facilities as examples of where trials of banned equipment had informed permanent arrangements, and noted that it also provided an example of identifying coexistence between banned equipment and radiocommunications services.

Some stakeholders offered views on the RPAS disruption exemption). Our response to those views is on the [outcomes statement published on our website](https://www.acma.gov.au/consultations/2022-07/new-arrangements-banned-equipment-and-exemptions-framework-consultation-232022).

## Our response

Greater transparency surrounding exemptions was a key objective for the review, and stakeholders offered commentary on this issue. We regard the *Information for users* document as an important addition to the exemption regime: it provides stakeholders with a transparent insight into how we consider exemption proposals, and conveys our expectations to law enforcement about matters that we will consider when making exemptions. We have also implemented a similar document to support the innovation and industry development framework, and we note that that framework is performing as expected (with 3 applications granted since it was implemented in December 2021).

The document does not have the regulatory status of a legislative instrument, and we regard that the level of flexibility this affords is appropriate for law enforcement operating under exemptions. Industry stakeholders relying on the innovation and industry development framework are regulated more closely. It has been our practice to register radiocommunications advisory guidelines made under section 262 of the Radiocommunications Act on the FRL, although there is no legislative requirement for us to do so. We regard publishing the *Information for users* document on our website as preferable, because we can update it more responsively than if it was published on the FRL, and stakeholders are more likely to access the information from our website than on the FRL. If someone operates a device both inconsistently with an exemption and in breach of the Act, that the document is not made under section 262 would neither help nor hinder our compliance efforts.

The visiting dignitaries exemption facilitates importation and use of banned equipment by security forces working with Australian law enforcement. Often, these visits involve operational and diplomatic sensitivities, and details can be settled very late. Use of a notifiable instrument to trigger the effect of the exemption will provide the ACMA with more time to consult with relevant stakeholders than would be the case were a new legislative instrument (and associated processes) involved.

The ECM exemption now applies to potential contractors, because, as a result of the passage of the Modernisation Act, offer to supply (and not just supply) of banned equipment is a breach of the Radiocommunications Act (see sections 175 and 176).

We note that trials of banned equipment at NSW correctional facilities were useful in informing longer-term exemption arrangements, and provided an opportunity to conduct coexistence studies. However, use of banned equipment in those facilities was unique – the banned equipment is essentially operated continuously at a fixed location, whereas most banned equipment used by law enforcement under exemptions is used for very short periods of time (in some cases, as briefly as 30 seconds) on a mobile basis. Where an opportunity to conduct a coexistence study arises, and where banned equipment can be operated on a coexistence basis, we will take that opportunity; but in most cases this will not be possible. Instead, we rely on the expertise of law enforcement in undertaking practical mitigation measures when deploying banned equipment (both pre-emptively before a deployment and when using the equipment) and on the risk analysis that we undertake when considering a proposed exemption.

## Outcomes

In addition to making the RPAS disruption exemption in September 2022, we have made the ECM exemption, the visiting dignitary exemption, and the amendment exemption. We will also publish the *Information for users* document on our website.

We carefully considered stakeholder views about interference management strategies, interactions between licensees and law enforcement, and accountability measures. We considered that the standardised record-keeping requirements across the exemption regime (with the exception of the visiting dignitary exemption) are sufficient to manage these issues, and are also intended to aid our oversight and management of the framework. The information to be collected by exempt persons relates to the possession, operation and supply of banned equipment, and also specific technical parameters of equipment.

We noted views from stakeholders that information required to be kept by law enforcement should be made available more widely. We do not consider that it is appropriate that third parties are provided with that information as a matter of course, given that it relates to law enforcement operations and capability. As set out in the *Information for users* document, we have a policy on information about banned equipment used under exemptions as appropriate. There is also a dedicated information-sharing policy applicable to the innovation and industry development framework.

Record-keeping requirements will allow us to assess whether agreed notification arrangements are working as intended. The security and operational sensitivities surrounding law enforcement activities, and the established use of banned equipment under exemptions by law enforcement for more than a decade, mean that we are comfortable with notification arrangements operating outside of legislative instruments. We receive pre- and post-incident notifications of use of banned equipment, and understand that the arrangements that are in place are working as intended.

As signalled in our approach to the review, we consider it appropriate to more closely regulate private sector access to banned equipment. In consulting and collaborating with stakeholders on arrangements to facilitate operational/open-air testing of banned equipment by private-sector stakeholders under the innovation and industry development framework, we have implemented regulatory requirements around notifications. Persons undertaking operational/open-air testing will be required to notify specified stakeholders 14 days prior to the activity.

Long-term licensing arrangements for RNSS retransmission technologies are likely to require amendments to legislative instruments, on which we will consult – see Next Steps below.

# Summary of review outcomes

Overall, our review has enabled a strengthened framework that will be much improved for regulated entities, stakeholders, and the ACMA, and will deliver greater public benefit.

The reviewed framework will achieve the following regulatory reform outcomes:

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

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

Fewer ‘false positives’ (that is, 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.

Aligns with government domestic and defence industry policy.

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

* There will be streamlined exemption arrangements for specified correctional facilities operated by Corrective Services NSW.
* Instruments will provide for delegated operational decisions where appropriate.
* A permit-based exemption system for the AFP, state and territory police, providing security for visiting dignitaries.

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

### 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 domestic aircraft will be removed.

Defence and Defence supplier access to banned equipment will be better regulated, under primary legislation.

Figures 1 and 2 illustrate the framework before and after the review.

# Next steps

We will liaise with entities and people currently operating under exemptions to implement any operational arrangements.

As licensing of a broader range of RNSS retransmission devices is a major outcome of the review, we will consider which parts of the radiocommunications framework need to be updated to transition to permanent equipment licensing.

Over the course of the review, 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.

We expect to consult on draft regulatory arrangements – including licence type, technical conditions and pricing – for permanent licensing in early 2024.

Assigned scientific licences will continue to be available to support trials in the intervening period.

**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 2023

Radiocommunications (Exemption–Corrective Services NSW) Determination 2021​

Radiocommunications (Exemption–Bomb Disposal Electronic Counter Measures) Determination 2023​

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**

**(Key: grey = old instrument; dark grey = new instrument)**

Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011

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

Radiocommunications (Jamming Equipment) Permanent Ban 2023

**Then (May 2020)**

**Now**

1. The banned equipment and exemptions framework was formerly referred to as the prohibitions and exemptions framework. [↑](#footnote-ref-2)
2. Devices operating under the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015*. [↑](#footnote-ref-3)
3. Noting that the ‘no interference, no protection’ policy does not excuse or contemplate deliberate interference – rather, it is a proportionate response to devices that do not require device-by-device coordination, because of the nature of the service offered, technology used, and technical and operational conditions typically imposed in class licences. [↑](#footnote-ref-4)
4. Defined as equipment the principal purpose of which is the carriage of communications both:

   (a) from a person or thing to one or more other persons or things; and

   (b) from one or more of the other persons or things to the first-named person or thing in paragraph (a). [↑](#footnote-ref-5)
5. Electronic Counter Measure (ECM) devices can be used to thwart remote detonations of IEDs by causing interference to radiocommunications. 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. [↑](#footnote-ref-6)
6. Under the innovation and industry development framework, operational/open-air testing can only be facilitated in cooperation with the Australian Federal Police or the police force of a state or territory. (collectively, Australian Police), or a Prescribed Organisation specified in Schedule 3 of the [Radiocommunications Regulations 1993](https://www.legislation.gov.au/Details/F2021C00568). In practice, the ACMA will likely consult with the entities mentioned above before giving such permission. [↑](#footnote-ref-7)