Proposal to remake the Radiocommunications (Exemption) Determination 2021

Consultation paper

MAY 2024

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[Background 1](#_Toc166080127)

[About the exemption determination 2](#_Toc166080128)

[Banned equipment 2](#_Toc166080129)

[Types of exemptions 2](#_Toc166080130)

[Scope 2](#_Toc166080131)

[Proposed changes to the exemption determination 4](#_Toc166080132)

[Shielded enclosure operation 4](#_Toc166080133)

[Five-year self-repeal date 4](#_Toc166080134)

[Arrangements for named person exemptions 5](#_Toc166080135)

[Invitation to comment 6](#_Toc166080136)

[Making a submission 6](#_Toc166080137)

# Background

In August 2021, we made the [Radiocommunications (Exemption) Determination 2021](https://www.legislation.gov.au/F2021L01201/latest/text) under section 302(2) of the *Radiocommunications Act 1992*.

Under section 3 of the exemption determination, the exemption determination is repealed on the third anniversary of the day it was registered on the Federal Register of Legislation. That is, on 28 August 2024 (the self-repeal date).

We have formed the preliminary view that the exemption determination is operating effectively and efficiently, and continues to form a necessary and useful part of the legislative framework.

We propose to remake this instrument prior to its self-repeal date so that its ongoing effect is preserved.

For the new exemption determination we propose to:

remove references to ‘screened room’ and replace them with ‘shielded enclosure’ to more accurately capture the range of applicable enclosures

set a 5-year self-repeal timeframe.

We also propose that the new exemption determination commence on the expiry date of the current instrument, to allow for arrangements to be put in place for current ‘exemption holders’ where appropriate.

We propose to remake the instrument with the changes outlined above, and for
the new instrument to be called the Radiocommunications (Exemption)
Determination 2024.

# About the exemption determination

## Banned equipment

Under the Act, we manage a suite of legislative instruments, notifiable instruments, administrative documents and processes. This is collectively referred to as the ‘banned equipment and exemption framework’, which comprises of bans on certain equipment, and exemptions to those bans.

Permanent bans on equipment are made under section 172 of the Act. We have imposed permanent bans on the 3 types of jamming equipment specified in the Radiocommunications (Jamming Equipment) Permanent Ban 2023.

## Types of exemptions

There are 2 types of exemptions that can be made under the Act that allow a person to use equipment covered by the permanent ban.

Exemptions made under section 27 can only be made in relation to a narrow range of persons, who generally have functions or duties in relation to defence, national security, law enforcement or emergency services. These exemptions play an important role in facilitating a range of safety, security and law enforcement related outcomes that can only be achieved using banned equipment.

Section 302 exemptions can facilitate limited and controlled access to, and use of, banned equipment by select persons. The ability for the ACMA to make exemptions under section 302 is the basis of the innovation and industry development framework.

The innovation and industry development framework is designed to promote
research and development, manufacturing and market development opportunities involving banned equipment for Australia’s defence, technology and radiocommunications sectors.

Section 302 exemptions typically apply to private sector persons. This includes equipment manufacturers who supply banned equipment to domestic entities covered by section 27 exemptions, or who have broad statutory exemptions from the operation of the Act (such as the Defence Force and other entities under sections 24, 25 and 26 of the Act).

## Scope

This consultation focuses on the operation of the exemption determination, whether it should be remade, and any proposed modifications if it is remade. Any issues regarding the framework, including section 27 exemptions, are outside the scope of this consultation.

### The exemption determination

The exemption determination was made under subsection 302(2) of the Act. The exemption determination can facilitate limited and controlled access to, and use of, banned equipment by select persons. It cannot facilitate the general operation or use of banned equipment.

The exemption determination sets out acts that are exempt and the conditions that must be complied with to get the benefit of the exemption. One such condition is that a person, to get the benefit of the exemption, must be named in a notifiable instrument made under the exemption determination. The exemption determination sets out the process for a person to apply for a ‘notifiable instrument’ to become a ‘named person’ (referred to as named person exemptions).

As per Schedule 1, paragraphs 1(2)(a) and (b) of the current exemption determination, to be named in a notifiable instrument, applicants must satisfy us that:

making the notifiable instrument either would be in the public interest, or would be consistent with any legislative rules made under paragraph 302(4)(b) of the Act

making the notifiable instrument would not lead to a significant risk of a contravention of a condition of the exemption determination.

Currently, there are 4 named person exemptions made under the exemption determination. Due to the self-repeal of the exemption determination, these will cease to have effect from 28 August 2024. These named person exemptions are the:

[Radiocommunications (Named Person – APC Technology Pty Ltd) Instrument 2023](https://www.legislation.gov.au/F2023N00344/latest/text)

[Radiocommunications (Named Person – Department 13 Pty Limited) Instrument 2022](https://www.legislation.gov.au/F2022N00241/latest/text)

[Radiocommunications (Named Person – DroneShield Group Pty Ltd) Instrument 2023](https://www.legislation.gov.au/F2023N00598/latest/text)

[Radiocommunications (Named Person – L3 Harris Micreo Pty Limited) Instrument 2022](https://www.legislation.gov.au/F2022N00306/latest/text)[.](https://www.legislation.gov.au/F2023N00344/latest/text)

# Proposed changes to the exemption determination

We consider the exemption determination is operating effectively and efficiently. We are proposing to remake it without significant change.

On reviewing the exemption determination, we consider there are minor changes that would be beneficial for clarity and to provide continuity of arrangements for exemption holders. Full details are outlined below. In brief, the proposed changes would:

Allow for banned equipment operated in accordance with the conditions of the exemption determination to be operated in a broader range of shielded enclosures, not only the currently permitted ‘screened room’.

Set a 5-year self-repeal date, instead of 3 years.

In addition, we propose to delay commencement of the new exemption determination, to allow for arrangements to be implemented for the persons named in the four named person exemptions.

A draft of the proposed instrument that would, if made, replace the Radiocommunications (Exemption) Determination 2021, is available on our website.

## Shielded enclosure operation

Currently, it is a condition under section 10 the exemption determination that a person can only operate a banned device if all radio emissions from the device are dissipated into a dummy load, or the device is operated in a screened room.

The exemption determination currently defines ‘screened room’ in subsection 5(1) as ‘a room that prevents, or is designed to prevent, the entry or escape of radio emissions’*.*

A screened room is essentially a type of shielded enclosure. For industry stakeholders, these 2 terms are often used interchangeably. We consider the exemption determination should capture both under a single definition:

**Shielded enclosure** means a container, room, or other thing that encloses a space, which prevents, or is designed to prevent, the entry or escape of radio emissions from that space.

We propose to include the above ‘shielded enclosure’ definition in the exemption determination, and that the reference to ‘screened room’ the condition in section 10 be replaced with ‘shielded enclosure’.

## Five-year self-repeal date

Section 3 of the current exemption determination provides that the instrument is repealed on the third anniversary of the day it commences.

We are of the view that the exemption determination is working as intended.

Since its commencement, 5 persons have been named in named person exemptions under the exemption determination (4 named persons are currently in force). Without the named person exemptions, these persons would not have been permitted to manufacture, operate, or supply banned equipment in Australia.

The current exemption determination underpins our innovation and industry development framework. The innovation and industry development framework is designed to promote research and development, manufacturing, and market development opportunities involving banned equipment for Australia’s defence, technology, and radiocommunications sectors.

Due to the exemption determination’s successful operation, we propose to extend the self-repeal date in the new instrument to 5 years. This would allow us to make named person exemptions for longer periods, providing greater business certainty.

## Arrangements for named person exemptions

Under the exemption determination, there are currently 4 named person exemptions. We propose for the new exemption determination to commence on the expiry date of the current instrument. This would allow us to seek additional information from the subjects of the named person exemptions and consider making new named person exemptions under the new exemption determination.

We further propose transitional provisions so that the new exemption determination will allow for applications to have a named person exemption made and be submitted prior to the new exemption determination commencing. Any application received would be assessed and a named person exemption would be made (if applicable) under the new exemption determination.

# Invitation to comment

## Making a submission

We are seeking your comments regarding our proposal to remake the exemption determination with changes outlined in this consultation paper.

[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 Section

Australian Communications and Media Authority

PPO Box 13112

Law Courts

Melbourne VIC 8010

The closing date for submissions is **COB,** **Tuesday 11 June 2024**.

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

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