

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACMA consultation

**Proposal to remake the
Radiocommunications
(Exemption) Determination
2021**

PUBLIC VERSION

June 2024

OPTUS RESPONSE TO ACMA CONSULTATION

1. Optus welcomes the opportunity to provide feedback to the Australian Communication and Media Authority's (ACMA) consultation on its proposal to remake the *Radiocommunications (Exemption) Determination 2021* (the "Exemption Determination") which is set to expire on 28 August 2024. The ACMA proposes to remake the Exemption Determination as the *Radiocommunications (Exemption) Determination 2024* to commence on the 28 August 2024 and to include the following key changes:
 - (a) Replace references to 'screened room' with the more general term 'shielded enclosure' to more accurately capture the range of applicable enclosures.¹
 - (b) Set a 5-year self-repeal timeframe.
2. The Exemption Determination underpins the ACMA's innovation and industry development framework, which is designed to promote research and development, manufacturing and market development opportunities involving banned equipment for Australia's defence, technology and radiocommunications sectors. Optus agrees that the Exemption Determination appears to be operating effectively and efficiently and that it should be remade as proposed by the ACMA.
3. Optus supports the ACMA's proposed changes to the Exemption Determination. Specifically, we agree to the proposed replacement of 'screened room' with 'shielded enclosure' as the operative effect of the terms, namely, to define a room or space that "prevents, or is designed to prevent, the entry or escape of radio emissions" remains the same. Optus also agrees to the extension of the proposed self-repeal date for the Exemption Determination from 3 to 5 years and that the new Exemption Determination commence from the date of expiry of the current Determination.

Need to maintain oversight of exempt activities, including record keeping and notifications

4. Optus generally supports the ACMA's approach to assessing applications for exemptions (for named persons) and welcomes the effort the ACMA has made to help ensure the transparency of the regime – including via consultation with affected stakeholders on exemption applications. Our ongoing support for the Exemption Determination is based on the understanding that a sufficient degree of oversight on the activities of exempt "named persons" is maintained.
5. Optus is aware that there are currently four (4) named person exemptions instruments in place for "APC Technology Pty Ltd, Department 13, Droneshield Group Pty Ltd and L3 Harris Micro Pty Ltd. These will cease to have effect from the date the Exemption Determination expires and the ACMA has advised that it intends to seek further information from these parties to consider making new named person exemptions under a revised Exemption Determination.
6. Based on our experience, Optus do not have any concerns regarding the activities of these "named persons". Nevertheless, we consider that transparency and accountability in the management of the exemptions arrangements will be key to helping mobile network operators (MNOs) maintain sufficient oversight about potential interference and

¹ The proposed definition of "shielded enclosure" is 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" as per page 4 of the ACMA's consultation paper.

resultant regulatory compliance risks. A risk-based approach is important to ensuring that the Exemption Determination continues to promote the public interest.

7. To this end, we reiterate the need to ensure compliance with the record-keeping requirements set out under Exemption Determination, with the potential to revoke a “named person” exemption instrument for contravention of these and other conditions.² Further to the extent that exempt persons ever conduct testing outside of a shield enclosure, such testing should be conducted in areas outside mobile coverage and in accordance with recognised international standards to ensure no harmful interference to surrounding licensed services.³
8. Relatedly, Optus has raised other concerns about the scope and operation of the ACMA’s banned equipment and exemptions framework, including in relation to the use of otherwise banned equipment by a narrow range of persons that may benefit from exemptions under section 27 of the Act. In Optus experience, most exempt parties appear to provide timely and sufficiently detailed notification of their exempt activities, though there are some parties that perform much better than others in this regard.
9. Optus reiterate our concerns about the potential increased interference risks that may flow from a loosening of restrictions about the importation, distribution and use of otherwise banned devices. Accountability and transparency in the administration of the banned equipment and exemption framework will remain central to mitigating this risk.

² As per subclause 2 of Schedule 1 of the proposed draft Exemption Determination 2024

³ Optus July 2021 submission to ACMA consultation on banned equipment and exemptions framework: innovation and industry development exemptions