

## EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

### *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011*

#### *Radiocommunications Act 1992*

#### **Purpose**

The *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011 (the Declaration)* prohibits the operation or supply, or possession for the purpose of operation or supply, of public mobile telecommunications service (PMTS) jamming devices. Such devices are designed to have an adverse effect on radiocommunications or would be likely to substantially interfere with, disrupt or disturb, radiocommunications used for the supply of PMTS.

The purpose of the Declaration is to protect PMTS from substantial interference or disruption or disturbance. PMTS is defined in section 32 of the *Telecommunications Act 1997*.

The definition of PMTS is fundamental to the Declaration. By employing a generic service description of PMTS to define a PMTS jamming device, rather than specifying the exact frequency bands in which PMTS operate, the Declaration is designed to take into account the dynamic nature of spectrum use. This ensures that should PMTS operate in different or additional frequency bands in the future, the Declaration has sufficient flexibility to accommodate such changes.

This new definition addresses the limitations of the *Notification that the Australian Communications and Media Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices* issued in 1999 (**the Mobile Phone Jammer Prohibition**). The Mobile Phone Jammer Prohibition only applied to jamming devices operating in the 870-960 MHz and 825-845 MHz frequency ranges. Since 1999, the range of frequency bands used for PMTS has increased.

The Declaration includes an exemption that applies to the operation, possession or supply of a device which facilitates the provision of a carriage service on board an aircraft that is authorised by a public telecommunications service licence. The inclusion of the exemption continues existing arrangements found in the Mobile Phone Jammer Prohibition.

The Declaration revokes the Mobile Phone Jammer Prohibition.

#### **Legislative Provisions**

Subsection 190(1) of the *Radiocommunications Act 1992 (the Act)* provides that the Australian Communications and Media Authority (the ACMA) may, by notice published in one or more newspapers circulating in the capital city of each state and territory, declare that operation or supply, or possession for the purpose of operation or supply, of a specified device is prohibited for the reasons set out in the notice.

A Declaration made under section 190(1) of the Act is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LIA).

#### **Background**

In 1999, the Australian Communications Authority made the Mobile Phone Jammer Prohibition under section 190 of the Act. The Mobile Phone Jammer Prohibition prohibits the possession, supply and operation of any device designed to interfere with, disrupt or disturb radiocommunications operating in the frequency bands 870-960 MHz or 825-845 MHz.

Since 1999, technological and social developments have resulted in a proliferation of devices that consumers now use for the purpose of communication and the realization that there are circumstances where the use of a jamming device may be justified. As a consequence of these developments, the ACMA undertook a review of the regulatory framework surrounding mobile phone jammers, including the Mobile Phone Jammer Prohibition.

In January 2010, as part of the review the ACMA released a public discussion paper which sought comment on the regulation of mobile phone jammers in Australia. The main themes expressed in the submissions received were:

- The original reasons for making the Mobile Phone Jammer Prohibition remained relevant.
- The Mobile Phone Jammer Prohibition should be retained in some form.

Having taken public comments into account, the ACMA makes the Declaration, which includes provision for the revocation of the Mobile Phone Jammer Prohibition.

### **Consultation**

In accordance with the requirements of section 191 of the Act, notice of the ACMA's intention to make the Declaration and a copy of the draft declaration was published in the *Gazette* on 10 November 2010. The notice sought comment on the proposal to make the Declaration and to revoke the existing Mobile Phone Jammer Prohibition. Following the *Gazette* notice publication, the draft declaration and accompanying consultation paper were published on the ACMA website. Interested persons were invited to provide comment by 20 December 2010.

Five submissions were received in response to the invitation for public comment, all of which were supportive of the proposal. The ACMA acknowledged all submissions it received and gave due consideration to the comments provided.

The ACMA is satisfied that the consultation undertaken was appropriate for the purpose of section 17 of the LIA.

The Office of Best Practice Regulation (the OBPR), was consulted about the making of the Declaration. The OBPR did not require a Regulation Impact Statement (RIS). The RIS exemption number for the Declaration is 11650.

### **Detailed description of the Declaration**

Details of the Declaration are set out in the **Attachment**.

## Notes on Sections

### **Section 1      Name of Declaration**

Section 1 provides that the name of the Declaration is the *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011*.

### **Section 2      Commencement**

This section provides that the Declaration commences on the day after it is registered on the Federal Register of Legislative Instruments or the day by which the Declaration is published in one or more newspapers circulating in a capital city of each State and Territory in accordance with subsection 190(1) of the Act.

### **Section 3      Definitions**

Section 3 defines terms used in the Declaration. These include 'public mobile telecommunications service' which is defined in section 32 of the *Telecommunications Act 1997*. The inclusion of 'public mobile telecommunications service' in the definition of PMTS jamming device addresses the limitations of the Mobile Phone Jammer Prohibition which specified frequency bands as opposed to adopting a service type definition. The Declaration will therefore encompass future allocations of PMTS without amendment required.

### **Section 4      Meaning of PMTS jamming device**

This section provides the characteristics of a PMTS jamming device as being a device that is designed to have an adverse effect on radiocommunications or would be likely substantially to interfere with, disrupt or disturb radiocommunications. The characteristics provide that the device must also operate within one or more frequency bands used for PMTS. This includes a device primarily operating on a frequency band not used for PMTS, but which still operates within and affects PMTS.

### **Section 5      Prohibition of PMTS jamming devices**

Section 5 specifies that the operation or supply, or possession for the purpose of operation of a supply, of a PMTS jamming device is prohibited, subject to sections 6 and 7.

### **Section 6      Operation of certain PMTS jamming devices on board an aircraft**

This section enables the operation and possession of a PMTS jamming device if that device is part of a system that provides carriage services on board an aircraft. The operation of the device must be authorised by a PMTS Class C apparatus licence which is issued under the *Radiocommunications Act 1992*. The PMTS Class C apparatus licence authorises the in-flight operation of any Civil Aviation Safety Authority approved on board system and limited terrestrial operation of the on board system to enable testing and maintenance within non-spectrum licensed space.

### **Section 7      The supply of certain PMTS jamming devices for operation on board an aircraft**

This section enables the supply of a PMTS jamming device, or the possession of a PMTS jamming device for the purpose of its supply, under conditions specified in this section. This provision assists the holder of a

PMTS Class C apparatus licence to obtain a PMTS jamming device for the purpose of its operation on board an aircraft.

## **Section 8      Revocation**

This section provides that the declaration known as the *Notification that the Australian Communications and Media Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices* is revoked.

## **Schedule 1      Reasons for Prohibition**

The schedule sets out the reasons for prohibiting the operation, possession or supply of PMTS jamming devices. These reasons include that PMTS jamming devices can be used to block, or otherwise interfere with radio emissions between a mobile handset, commonly known as a mobile phone, and a base station. The prevention of access to PMTS may adversely affect business and individuals by preventing access to the emergency call services, or through loss of business by causing inconvenience to mobile phone users. Further, high powered PMTS jamming devices may emit radiation levels that pose a risk to public safety.