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

*Radiocommunications Act 1992*

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Determination under subsection 27 (2) of the *Radiocommunications Act 1992*.

Dated  *10 November* 2011

*Chris Chapman*
[signed]
Member

*Richard Bean*
[signed]
Member~~/General Manager~~

Australian Communications and Media Authority

**1 Name of Determination**

This Determination is the *Radiocommunications (PMTS Jamming Devices – Visiting Forces and Suppliers) Exemption Determination 2011.*

**2 Commencement**

This Determination commences on the day after it is registered.

*Note:* All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003.* See http://www.frli.gov.au.

**3 Revocation**

The *Radiocommunications (Prohibited Device) (Mobile Telephone Jamming Devices) Exemption Determination 2004* is revoked.

**4 Definitions**

In this Determination:

***Act*** means the *Radiocommunications Act 1992*.

***Defence Force*** has the meaning given by section 30 of the *Defence Act 1903*.

***Department of Defence*** means the Department administered by the Minister for Defence.

***member of a civilian component of a visiting force*** has the meaning given by subsection 5 (3) of the *Defence (Visiting Forces) Act 1963*.

***member of a visiting force*** has the meaning given by subsection 5 (2) of the *Defence (Visiting Forces) Act 1963*.

***PMTS jamming device*** has the meaning given by section 4 of the *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011.*

***visiting force*** has the meaning given by subsection 5 (1) of the *Defence (Visiting Forces) Act 1963*.

**5 Exemption in relation to certain activities by visiting forces**

1. Any act or omission by a visiting person in relation to the use, operation, possession or supply of a PMTS jamming device is exempt from Parts 3.1, 4.1 and 4.2 of the Act in the circumstances specified in subsection (3).
2. For the purposes of this section, ***visiting person*** means a person who:
	1. is a:
3. member of a visiting force; or

(ii) member of a civilian component of a visiting force; and

* 1. is performing a function or duty in relation to the defence, security or international relations of Australia or a foreign country whose naval, military or air force is acting in co-operation with the Defence Force.
1. For the purposes of subsection (1), all of the following circumstances must exist:
	1. the act is done, or the omission occurs, in the performance of the visiting person’s functions or duties as a member of a visiting force or civilian component of a visiting force (as the case may be); and
	2. in the case of the use or operation of a PMTS jamming device:
2. the use or operation of the PMTS jamming device has been approved in writing by a member of the Defence Force, or an officer of the Department of Defence, in the performance of his or her functions or duties as such a member or officer; and

(ii) the use or operation of the PMTS jamming device occurs in accordance with the approval referred to in subparagraph (i).

**6 Exemption in relation to certain activities by suppliers of PMTS jamming devices for visiting forces**

1. Any act or omission by a supplier in relation to the use, operation, possession or supply of a PMTS jamming device is exempt from Parts 3.1, 4.1 and 4.2 of the Act in the circumstances specified in subsection (3).
2. For the purposes of this section, ***supplier*** means a person who satisfies all of the following requirements:
3. the person is a party to a written agreement that:
4. is for the supply of a PMTS jamming device to a visiting force; and
5. is approved in writing by a member of the Defence Force or an officer of the Department of Defence, in the performance of his or her functions or duties as such a member or officer; and
6. the person is performing a function or duty in relation to the defence, security or international relations of Australia or a foreign country whose naval, military or air force is acting in co-operation with the Defence Force.
7. For the purposes of subsection (1), all of the following circumstances must exist:

(a) the act is done, or the omission occurs, in accordance with the agreement referred to in subsection (2); and

(b) in the case of the use or operation of a PMTS jamming device:

(i) the use or operation of the PMTS jamming device has been approved in writing by a member of the Defence Force, or an officer of the Department of Defence, in the performance of his or her functions or duties as such a member or officer; and

(ii) the use or operation of the PMTS jamming device occurs in accordance with the approval referred to in subparagraph (i).

**7 Exemption in relation to certain activities by suppliers of PMTS jamming devices to Defence Force or Department of Defence**

1. Any act or omission by a supplier in relation to the use, operation, possession or supply of a PMTS jamming device is exempt from Parts 3.1, 4.1 and 4.2 of the Act in the circumstances specified in subsection (3).
2. For the purposes of this section, ***supplier*** means a person who satisfies all of the following requirements:
3. the person is a party to a written agreement that:
4. is for the supply of a PMTS jamming device to the Defence Force or the Department of Defence; and
5. is signed by a member of the Defence Force, or an officer of the Department of Defence, in the performance of his or her functions or duties as such a member or officer; and
6. the person is performing a function or duty in relation to the defence, security or international relations of Australia or a foreign country whose naval, military or air force is acting in co-operation with the Defence Force.
7. For the purposes of subsection (1), all of the following circumstances must exist:
	1. the act is done, or the omission occurs, in accordance with the agreement referred to in subsection (2); and

(b) in the case of the use or operation of a PMTS jamming device:

(i) the use or operation of the PMTS jamming device has been approved in writing by a member of the Defence Force, or an officer of the Department of Defence, in the performance of his or her functions or duties as such a member or officer; and

(ii) the use or operation of the PMTS jamming device occurs in accordance with the approval referred to in subparagraph (i).

*Note* Sections 24 and 26 of the Act contain certain exemptions that relate to members of the Defence Force and officers of the Department of Defence.