

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

*Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination
2014*

Radiocommunications Act 1992

Purpose

The Australian Communications and Media Authority (the ACMA) has made the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination 2014* (the Determination).

The Determination revokes and replaces the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination 2004* (the 2004 Determination) without making any significant changes to the regulatory arrangements created by the 2004 Determination.

The ACMA has made the Determination because the 2004 Determination was due to 'sunset' (i.e. be automatically repealed) on 1 April 2015, by operation of Part 6 of the *Legislative Instruments Act 2003* (the LIA).

Following review and consultation as described below, the ACMA formed the view that the 2004 Determination was operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. To preserve the effect of the 2004 Determination, the ACMA has therefore revoked the 2004 Determination before its sunset date and remade it with only minor changes as the Determination.

Legislative Provisions

Under subsection 27(2) of the *Radiocommunications Act 1992* (the Act), the ACMA may determine that acts or omissions by members of a class of persons performing a function or duty in relation to the defence of Australia be exempt from certain provisions of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make a legislative instrument, the power shall be construed to include a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

The Determination is a legislative instrument and may be subject to disallowance in accordance with section 42 of the LIA.

Background

The Radionavigation-Satellite Service (RNSS) is a worldwide position, velocity and time-determination system that involves the use of satellites, as well as supporting infrastructure on the ground. The RNSS includes the Global Positioning System (GPS), which is used in Australia for a wide range of military and civilian applications. These include Australia's air traffic management system, in-car navigation, maritime navigation, agricultural machine guidance and yield monitoring, land surveying, natural resource management, asset management, Intelligent Transport Systems, mining and emergency services. GPS is also used for timing determination for communications, banking, commerce, manufacturing and the internet.

RNSS jamming devices transmit signals that interfere with RNSS signalling and reception. These jamming devices can affect services over significant distances, interfering with other licensed radiocommunications, and posing a risk to public safety and the integrity of the radiocommunications spectrum.

The ACMA has made the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Declaration 2014* (the Declaration), which makes it an offence to operate or supply, or possess

for the purpose of operation or supply, a RNSS jamming device. The reasons for the prohibition are set out in section 5 of that Declaration.

The Department of Defence (Defence) uses RNSS jamming devices to deny adversary access to the RNSS. Defence therefore needs to be able to test, and train with, RNSS jamming devices, as well as be supplied with the devices.

Operation

The Determination allows members of the Australian Defence Force, officers of the Department of Defence and members of allied defence forces to lawfully operate and possess RNSS jamming devices. It also allows the lawful supply of the devices to Defence and its allied forces.

The Determination does this by exempting acts or omissions by members of a class of persons mentioned in subsection 4(2) of the instrument from section 189 and Part 4.2 of the Act in relation to:

- the operation or supply of a RNSS jamming device; and
- the possession, for the purpose of operation or supply, of a RNSS jamming device.

Section 189 of the Act provides penalties for the operation or supply, or possession for the purpose of operation or supply, of devices for which a declaration is in force under section 190. Part 4.2 of the Act prescribes offences relating to radio emission.

The Determination defines the term 'RNSS jamming device' by reference to the meaning given by the Declaration; that is, as a device that:

- a) is designed to have an adverse effect on the reception by RNSS receivers of RNSS radiocommunications; and
- b) would be likely substantially to interfere with, disrupt or disturb the reception by RNSS receivers of RNSS radiocommunications.

Consultation

Subsection 17(1) of the LIA requires that, before the ACMA makes a legislative instrument, it must be satisfied that any consultation that the ACMA considers is appropriate and reasonably practicable to undertake has been undertaken.

The ACMA published a consultation paper and draft instrument on its website between 20 February 2014 and 27 March 2014. The consultation paper explained the sunseting process and the ACMA's preliminary view that the existing arrangements under the 2004 Determination should be saved from automatic repeal and remade without any significant changes. Interested parties were invited to comment.

The ACMA received one submission in response to the consultation paper, which it took into account when making the Determination.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) applies streamlined administrative processes to sunseting legislative instruments. As the ACMA has determined that the 2004 Determination was fit for purpose and should be remade without any significant changes, and has certified those matters to OBPR, no Regulation Impact Statement (RIS) is required in relation to the making of the Determination. (OBPR reference ID 16294).

Detailed Description of the Instrument

Details of the Determination are set out in **Attachment A**.

Documents Incorporated in the Determination by Reference

The Determination incorporates by reference the following documents as in force from time to time or otherwise refers to them:

- > *Radiocommunications Act 1992*

- > *Defence Act 1903*
- > *Defence (Visiting Forces) Act 1963*
- > *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Declaration 2014*

The Acts and legislative instrument mentioned above can be found on the Australian Government's ComLaw website (<http://www.comlaw.gov.au>).

Statement of Compatibility with Human Rights

As required by subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared by the ACMA and is at **Attachment B**.

ATTACHMENT A

DETAILS OF THE *RADIOCOMMUNICATIONS (PROHIBITED DEVICE) (RNSS JAMMING DEVICES) EXEMPTION DETERMINATION 2014*

Section 1 – Name of Determination

Section 1 provides that the Determination is the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination 2014*.

Section 2 - Commencement

Section 2 provides that the Determination commences the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

Section 2A – Revocation of previous Determination

Section 2A provides that the 2004 Determination is revoked.

Section 3 – Definitions

Section 3 defines the terms used in the Determination.

Section 4 – Exemption – Defence and related persons

Section 4 exempts certain persons from offences under section 189 and Part 4.2 of the Act in relation to the operation or supply, and possession for the purpose of operation or supply, of a RNSS jamming device. These exempt persons include a member of the Defence Force or Department of Defence, a member of a visiting force, or a person supplying a RNSS jamming device to the Defence Force, Department of Defence or a visiting force.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination 2014

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination 2014* (the Determination) revokes and replaces the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Exemption Determination 2004* without making any significant changes to the regulatory arrangements created by that instrument.

The Determination exempts acts or omissions by members of a class of persons performing a function or duty in relation to the defence of Australia from section 189 and Part 4.2 of the Act, in relation to the operation or supply, or possession for the purpose of operation or supply, of a RNSS jamming device.

Human Rights Implications

The Determination does not engage any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.