

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Exemption – Corrective Services NSW) Determination 2021

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Exemption – Corrective Services NSW) Determination 2021* (**the Determination**) under subparagraph 27(1)(be)(ii) and subsection 27(2) of the *Radiocommunications Act 1992* (**the Act**), and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Subsection 27(2) of the Act allows the ACMA to determine that acts or omissions by members of a class of persons to whom section 27 applies are exempt from any or all of Parts 3.1, 4.1 and 4.2 of the Act or from specified provisions of those Parts. Under subparagraph 27(1)(be)(ii) of the Act, the ACMA may, by written determination, determine that a body that performs functions related to the investigation, prevention or prosecution of serious crime, or of corruption (whether or not the body also performs other functions), is a body to which subsection 27(1) applies.

Section 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including 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.

Purpose and operation of the instrument

A public mobile telecommunications service (**PMTS**) jamming device is a device designed to have an adverse effect on, or that would be likely substantially to interfere with, disrupt, or disturb, radiocommunications and the device operates within one or more bands used for the supply of a PMTS. PMTS are more commonly known as mobile or cell phone services.

Banned equipment under the Act

Part 4.1 of the Act contains provisions relating to banned equipment.

Under subsection 167(1) of the Act, the ACMA may, by notifiable instrument, impose an interim ban on equipment of a specified kind. Under subsection 172(1) of the Act, the ACMA may, by legislative instrument, impose a permanent ban on equipment of a specified kind.

Bans on equipment principally manage the risks associated with the operation and supply of equipment that is, in broad terms, designed, or is likely, to cause interference to radiocommunications. The imposition of a ban on such equipment is generally intended to protect consumers, businesses, government agencies and radiocommunications licensees from the potential interference to radiocommunications that the equipment subject to a ban can cause. Equipment subject to a permanent ban is commonly called a radiocommunications ‘jamming device’ or a ‘jammer’.

Section 170 of the Act imposes civil penalties in relation to the operation or supply of, or an offer to supply, equipment of a particular kind where an interim ban on equipment of that kind is in force. The maximum civil penalty payable is 200 penalty units, or \$44,400 on the current value of a penalty unit.

Sections 175 and 176 of the Act impose criminal offences and civil penalties in relation to the operation or supply of, or an offer to supply, equipment, or the possession of equipment for the purpose of operating or supplying it, where a permanent ban on equipment of that kind is in force. An offence is subject to imprisonment for a maximum of 2 years, or a maximum fine of 1000 penalty

units (\$222,000 on the current value of a penalty unit), or both. The maximum civil penalty payable is 1000 penalty units (\$222,000).

Prior to the commencement of the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020 (the Modernisation Act)*, declarations made under the now-repealed section 190 of the Act were the equivalents of permanent bans. The two declarations made under the repealed section 190 of the Act are the *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011 (PMTS Jamming Device Ban)* and the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Declaration 2014 (RNSS Jamming Device Ban)*. Transitional provisions within the Modernisation Act provide that these instruments have effect as if they had been made as permanent bans under subsection 172(1) of the Act.

Equipment subject to the PMTS Jamming Device Ban is capable of operating on, and causing interference to, PMTS. These radiocommunications services are relied upon by a wide range of businesses, consumers and government agencies for day-to-day convenience, and commercial, safety and security applications. For example, PMTS is critical for enabling emergency calls where a landline telephone is not available. Intentional or unintentional interference to these radiocommunications services can lead to serious inconveniences or major disruptions.

At the time of making the Determination, the ACMA had not made any interim bans under subsection 167(1) of the Act.

Equipment rules under the Act

Part 4.1 of the Act also contains provisions relating to the operation, possession and supply of equipment.

Section 160 of the Act provides it is an offence, and subject to a civil penalty, for a person to engage in conduct that is prohibited by equipment rules made under subsection 156(1) of the Act, or to engage in conduct that contravenes an obligation imposed by such equipment rules. (Contravention of some prohibitions or obligations may only be subject to a civil penalty, and not an offence; see subsections 160(9) and (10) of the Act.)

Parliament has prescribed that the maximum penalty for an offence, and the maximum civil penalty, is in each case 500 penalty units, or \$111,000 based on the current penalty unit amount of \$222.

The ACMA has made the *Radiocommunications Equipment (General) Rules 2021* under subsection 156(1) of the Act. This is a legislative instrument and is available, free of charge, from the Federal Register of Legislation (www.legislation.gov.au). Other instruments made by the ACMA have been saved as equipment rules by the Modernisation Act, and are also available, free of charge, from the Federal Register of Legislation.

Unlicensed equipment under the Act

Part 3.1 of the Act contains sections 46 and 47.

Under section 46 of the Act, it is an offence, and subject to a civil penalty, to operate a radiocommunications device otherwise than as authorised by a spectrum licence, an apparatus licence or a class licence issued under the Act. The maximum penalty for the offence is 2 years imprisonment for an individual, or 1500 penalty units (\$333,000 on the current value of a penalty unit) where the radiocommunications device is a radiocommunications transmitter, and 20 penalty units (\$4,440 on the current value of a penalty unit) for other radiocommunications devices. The maximum civil

penalty is 300 penalty units (\$66,600 on the current value of a penalty unit) where the radiocommunications device is a radiocommunications transmitter, and 20 penalty units (\$4,440 on the current value of a penalty unit) for other radiocommunications devices.

Under section 47 of the Act, it is an offence, and subject to a civil penalty, to possess a radiocommunications device for the purpose of operating the device otherwise than as authorised by a spectrum licence, an apparatus licence or a class licence. The maximum penalties for the offence, and the maximum civil penalty, are the same for section 47 as for section 46.

Interference provisions of the Act

Part 4.2 of the Act provides for offences and civil penalty provisions relating to interference to radiocommunications.

Section 192 provides for an offence where interference is likely to prejudice safe operation of vessels, aircraft or space objects. Section 193 provides for an offence where interference is likely to interfere substantially with radiocommunications carried by or on behalf of certain safety and emergency services organisations. Section 194 provides for an offence where a person does an act that is likely to endanger safety or cause loss or damage. Section 198 provides for an offence for the transmission of inducing a false belief that death, injury, loss or damage has been or will be caused. Section 199 provides for an offence to use a transmitter in a manner likely to cause an explosion. In each case, the maximum penalty for an individual is imprisonment for 5 years, or otherwise 5000 penalty units (\$1,110,000).

Under section 195, it is subject to a civil penalty to operate a transmitter on board a foreign vessel, foreign aircraft or foreign space object, to transmit television or radio programs into Australia, or in a way that will likely interfere substantially with radiocommunications involving Australia. The maximum civil penalty is 300 penalty units (\$66,600).

Under section 197, it is subject to a civil penalty to engage in conduct that will, or is likely to, result in substantial interference, disruption or disturbance to radiocommunications involving Australia. The maximum civil penalty is 500 penalty units (\$110,000).

Corrective Services NSW

Corrective Services NSW (CSNSW) is a body that, relevantly, ‘performs functions related to the investigation, prevention or prosecution of serious crime’ (subparagraph 27(1)(be)(i)) and may, therefore, fall within the scope of section 27 if the ACMA makes a determination covering CSNSW, in writing, for the purposes of subparagraph 27(1)(be)(ii).

The ACMA has previously made instruments under section 27 of the Act to allow CSNSW to conduct field trials of PMTS jamming devices at Lithgow Correctional Centre, which is located in a low population density area. The intention of the trials was to inform decision-making on whether it would be in the public interest to allow deployment of PMTS jamming devices in New South Wales correctional facilities. The use of mobile phones by inmates is considered to be a serious problem by CSNSW. While it is an offence in NSW for an inmate to use or possess a mobile phone without reasonable excuse, detection of possession and use of mobile phones can be difficult.

The trials at Lithgow Correctional Centre demonstrated that a PMTS jamming device could be operated successfully in a correctional facility located in a low population density area, without causing significant interference to mobile phones outside the facility. On 24 August 2018, the ACMA

made the *Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018* (the **2018 exemption determination**), which exempts CSNSW from Parts 3.1, 4.1 and 4.2 of the Act in relation to the use and operation of a nominated PMTS jamming device at Lithgow Correctional Centre on an ongoing basis, where specified circumstances exist.

On 12 August 2016, the ACMA made the *Radiocommunications (Testing and Field Trial by Corrective Services NSW of PMTS Jamming Devices at Goulburn Correctional Complex) Exemption Determination 2016* (**2016 exemption determination**) under section 27 of the Act. CSNSW commenced a field trial of PMTS jamming devices at Goulburn Correctional Complex in December 2019.

The purpose of the trial at Goulburn Correctional Complex was to assess the risk of the operation of a PMTS jamming device in a correctional facility in a location with a higher population density than the area around the Lithgow Correctional Centre. This trial was intended to contribute to decision-making on the feasibility of more widespread use of PMTS jamming devices in correctional facilities.

The trial at Goulburn Correctional Complex demonstrated that a PMTS jamming device can be operated in a correctional facility located in a medium population density area, without causing harmful interference to mobile phones outside the facility. CSNSW requested that the ACMA allow the possession and operation of PMTS jamming devices at Goulburn Correctional Complex on an ongoing basis after the 2016 exemption determination expired (originally scheduled to occur on 13 December 2021).

The ACMA has made the Determination to exempt CSNSW from the operation of Parts 3.1, 4.1 and 4.2 of the Act in relation to the use and operation a PMTS jamming device at Goulburn Correctional Complex. The Determination also consolidates the existing ongoing exemption arrangements at Lithgow Correctional Centre under the 2018 exemption determination, which has been repealed.

The purpose of the Determination is to:

- provide, for the purposes of subparagraph 27(1)(be)(ii) of the Act, that CSNSW is a body to which section 27 of the Act applies; and
- exempt from Parts 3.1, 4.1 and 4.2 of the Act, any act or omission by CSNSW, and certain staff or contractors of CSNSW, relating to the use, operation, possession and supply of PMTS jamming devices at Lithgow Correctional Centre and Goulburn Correctional Complex.

The Determination simplifies the provisions of the previous exemption arrangements. It also establishes requirements for CSNSW to provide specific information to the ACMA prior to using a PMTS jamming device, and to an authorised person upon request.

A provision-by-provision description of the Determination is set out in the notes at **Attachment A**.

Instruments made under subparagraph 27(1)(be)(ii) and subsection 27(2) of the Act are disallowable legislative instruments for the purposes of the *Legislation Act 2003* (the **LA**). The Determination is subject to the sunset provisions of the LA. However, the Determination contains a provision causing it to sunset after 5 years. This will ensure that the exemptions created by the Determination are subject to early review.

Documents incorporated by reference

Section 314A of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any Act or any other instrument or writing as in force or existing at a particular time or from time to time.

The following Acts and legislative instruments are incorporated by reference as in force from time to time:

- the 2016 exemption determination;
- the 2018 exemption determination;
- the Act;
- the *Australian Communications and Media Authority Act 2005*;
- the *Australian Radiofrequency Spectrum Plan 2021*;
- the *Crimes (Administration of Sentences) Act 1999 (NSW) (the Sentences Act)*;
- the PMTS Jamming Device Ban;
- the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015*; and
- the *Telecommunications Act 1997*.

The Commonwealth Acts and legislative instruments referenced in the Determination are available, free of charge, from the Federal Register of Legislation website at www.legislation.gov.au. The *Crimes (Administration of Sentences) Act 1999 (NSW)* is a New South Wales Act and is available, free of charge, from www.legislation.nsw.gov.au.

The Determination incorporates the Radio Regulations, published by the International Telecommunication Union, as existing from time to time. The Radio Regulations are available, free of charge, from the International Telecommunication Union's website at www.itu.int.

The Determination includes transitional provisions that apply in relation to matters in place immediately before the commencement of the Determination. The provisions incorporate the 2016 exemption determination and the 2018 exemption determination as in force immediately before the commencement of the Determination. Those versions of the 2016 exemption determination and the 2018 exemption determination are available, free of charge, from the Federal Register of Legislation at www.legislation.gov.au.

The Determination contains provisions and notes that refer to the Act, the AIA, the LA, the *Public Service Act 1999* and the Telstra Corporation and Other Legislation Amendment Bill 2021. These references do not, however, incorporate those Acts or that Bill.

Consultation

Before the Determination was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

From 15 September 2021 to 24 September 2021, the ACMA consulted directly with CSNSW, the Australian Mobile Telecommunications Association (AMTA), and the four carriers whose networks are primarily used for PMTS in Australia (Telstra, Optus, TPG Telecom and NBN Co) on the proposal to continue the effect of the 2016 exemption determination by making another determination under section 27 of the Act, which would also consolidate the 2018 exemption determination.

Explanatory Statement to the Radiocommunications (Exemption – Corrective Services NSW) Determination 2021

From 4 October 2021 to 1 November 2021, the ACMA conducted a public consultation process inviting submissions on the proposal to allow CSNSW to continue using and operating PMTS jamming devices at Goulburn Correctional Centre on an ongoing basis and consolidate the existing ongoing arrangements at Lithgow Correctional Centre through the release of a draft exemption determination and a consultation paper on the ACMA's website. The ACMA also notified subscribers to the ACMA's radiocommunications email subscriber list that the proposed consultation had been published.

The ACMA received five submissions from CSNSW, AMTA, Optus, Telstra and TPG Telecom. The ACMA considered all relevant issues raised when making the Determination.

The five submissions were supportive of ongoing exemption arrangements being established for CSNSW at Lithgow and Goulburn. The matters raised in the submissions did not result in any substantive changes to the draft exemption determination being made.

Regulatory impact assessment

The Office of Best Practice Regulation (**OBPR**) was consulted and advised that the Determination was unlikely to have more than a minor regulatory impact. The OBPR advised that a Regulatory Impact Statement is not required. The OBPR reference number is 17056.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out in **Attachment B** has been prepared to meet that requirement.

Notes to the *Radiocommunications (Exemption – Corrective Services NSW) Determination 2021*

Section 1 Name

This section provides for the Determination to be cited as the *Radiocommunications (Exemption – Corrective Services NSW) Determination 2021*.

Section 2 Commencement

This section provides for the Determination to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

Section 3 Authority

This section identifies the provisions of the Act that authorise the making of the Determination, namely subparagraph 27(1)(be)(ii) and subsection 27(2) of the Act.

Section 4 Repeal

This section provides that the 2016 exemption determination and the 2018 exemption determination are repealed.

Section 5 Repeal of this instrument

This section provides that the Determination is repealed five years from the day it commences. Continuity of access to private telecommunications outside the Lithgow Correctional Centre and Goulburn Correctional Complex is an important issue that may have safety-of-life implications. To be effective, PMTS jamming devices may require periodic reconfiguration; for example, as additional frequency bands are utilised for PMTS in an area, the device may need to be calibrated to operate on these frequencies. This section will ensure that the ACMA conducts a timely review of the operation of the Determination.

Section 6 Interpretation

This section defines a number of key terms used throughout the Determination.

Section 7 References to other instruments

This section provides that in the Determination, unless the contrary intention appears:

- a reference to any other legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument as in force, or existing, from time to time.

Section 8 Application of section 27 of the Act – Corrective Services NSW

Section 8 determines CSNSW to be a body for the purposes of paragraph 27(1)(be) of the Act. This enables the ACMA to make an exemption determination under subsection 27(2) in relation to persons performing a function or duty in relation to CSNSW, including:

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- the CSNSW staff; and
- persons with a contract with CSNSW in relation to PMTS jamming devices (see the definition of *CSNSW contractor* in section 6 of the Determination).

Section 9 Exemption – Corrective Services NSW, CSNSW staff and CSNSW contractors

Section 9 provides that, any act or omission by CSNSW, CSNSW staff or CSNSW contractors is exempt from Parts 3.1, 4.1 and 4.2 of the Act in the circumstances specified in section 10.

Section 10 Exemption – circumstances in which the exemptions apply

Subsection 10(1) provides that all of the circumstances set out in subsections 10(2) to 10(9) must exist for an exemption under section 9 to apply.

Subsection 10(2) requires that the act or omission is in relation to the use, operation, possession or supply of a PMTS jamming device. Other kinds of devices governed by the Act, including devices prohibited by the RNSS Jamming Devices Ban, are not covered by the exemption.

Subsection 10(3) specifies that the act must be performed, or the omission must occur, at a relevant facility. Section 6 defines a *relevant facility* as:

- the Goulburn Correctional Complex located in Maud Street, Goulburn, NSW; and
- the Lithgow Correctional Centre located at 596 Great Western Highway, Marrangaroo, New South Wales.

These are the two correctional facilities at which trials of PMTS jamming devices have been successfully conducted.

Paragraph 10(4)(a) requires a carrier liaison agreement to be in place between CSNSW and each of the *relevant carriers* (as defined in section 6 of the Determination). A carrier liaison agreement is intended to establish and formalise the liaison arrangements between relevant carriers and CSNSW for operational understanding and protocols, sharing of information and complaints resolution relating to the use of the PMTS jamming device at the Lithgow Correctional Centre and the Goulburn Correctional Complex. Carrier liaison agreements must be in place with Optus Mobile Pty Limited, NBN Co Limited, Telstra Corporation Limited (or, if the *Telecommunications Act 1997* and other legislation is amended to facilitate a restructure of Telstra's operations, Telstra Limited), and TPG Telecom Limited. Each of these entities holds a carrier licence under the *Telecommunications Act 1997*, and their networks are used to provide PMTS.

Paragraph 10(4)(b) requires the following details of each carrier liaison agreement to be published on the website of Corrective Services NSW:

- the name of each carrier that is a party to the agreement;
- the date that the agreement was entered into; and
- a brief description of the liaison arrangements between CSNSW and each of the carriers under the agreement.

Subsection 10(5) requires that, at the time the act is performed, or the omission occurs, one of the following circumstances must apply:

- an authorised person has not given Corrective Services NSW a notice under section 11;

- an authorised person has given Corrective Services NSW a notice under section 11 and the notice has been withdrawn;
- an authorised person has given Corrective Services NSW a notice under section 11 and the period specified in the notice has ended; or
- an authorised person has given Corrective Services NSW a notice under section 11 and the act is performed, or the omission occurs, at a location other than the location specified in the notice.

An **authorised person** is defined under section 6 as the ACMA, a member of the ACMA within the meaning of the ACMA Act and a member of ACMA staff that is a Senior Executive Service employee (**SES employee**) or acting SES employee. A **member of the ACMA** is defined in the ACMA Act as the Chair, Deputy Chair and other members of the ACMA, that are not associate members. An **SES employee** is an Australian Public Service employee who is classified as a Senior Executive Service employee. An **acting SES employee** is a non-SES employee who is acting in a position usually occupied by an SES employee.

Section 11 allows an authorised person to give a notice in relation to a location, which (combined with subsection 10(5)) will have the effect of removing the effect of the exemptions in section 9 during the period specified in the notice, or until the notice is withdrawn. This is designed to allow the ACMA to manage any risk of interference to PMTS arising from the use or operation of PMTS jamming devices in accordance with the Determination.

Subsection 10(6) requires CSNSW to comply with every request made by an authorised person under section 12 that has not been withdrawn before the act is performed or the omission occurs.

Section 12 allows an authorised person to request the provision of certain information from CSNSW, relating to PMTS jamming devices. The ACMA proposes to manage the risks of the proposed ongoing operation of PMTS jamming device at the Lithgow Correctional Centre and Goulburn Correction Complex through a requirement to provide specified information prior to using a PMTS jamming device, and during its operation, upon request. This will provide the ACMA with a mechanism to ensure that the circumstances specified in the Determination exist, and investigate interference issues if necessary.

Subsection 10(7) imposes information requirements on CSNSW in relation to the use or operation of a PMTS jamming device at a relevant facility, before the act is performed, or the omission occurs. CSNSW must have provided the following information to the ACMA in writing:

- the location of the PMTS jamming device within the facility;
- the frequencies on which the PMTS jamming device is capable of being operated;
- a test report in relation to the device at the facility that complies with subsection 10(9).

Subsection 10(8) requires that the use or operation of a PMTS jamming device must:

- be for the purpose of causing harmful interference on designated frequencies within a relevant facility (that is, essentially, to interfere with PMTS being used unlawfully at the facility);
- cause harmful interference only to radiocommunications on **base transmit frequencies** (as defined in section 6);
- not cause radio emissions with a power spectral density greater than -128.5 dBm/kHz on non-designated frequencies outside a relevant facility; and

- comply with the electromagnetic radiation requirements in Part 3 of the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* as if the PMTS jamming device were a transmitter operated under a licence to which that Part applies.

Subsection 10(9) provides that a test report must contain the information necessary to enable a person to assess whether the circumstances set out in subsection 10(8) would exist if the device were used or operated within a relevant facility.

Section 11 Notice – PMTS jamming device not to be used or operated

Subsection 11(1) provides for an authorised person to notify CSNSW, in writing, that a PMTS jamming device must not be used at a specified location and for a period specified in the notice.

An authorised person may have concerns about CSNSW’s use or operation of the PMTS jamming device at a specific location, including concerns about safety or potential interference issues, or where the person is unable to obtain or verify sufficient details about the operation of the PMTS jamming devices to alleviate these concerns. Examples of the kinds of situations that might raise such concerns include:

- threats to public safety resulting from the operation of a PMTS jamming device at a relevant facility;
- harmful emissions occurring outside a relevant facility;
- legitimate public complaints that are received about the use of a PMTS jamming device at a relevant facility that require further investigation; or
- requests from the ACMA for information and data in accordance with section 12 have not been met.

Subsection 11(2) requires the notice to specify a location that is a relevant facility, or a location that is within a relevant facility.

Subsection 11(3) allows an authorised person to give a written notice to CSNSW to withdraw a notice given under subsection 11(1).

Subsection 11(4) requires the ACMA to publish on its website each notice given under subsections 11(1) and 11(3).

Subsection 27(2A) of the Act allows the Determination to confer a power to make a decision of an administrative character on the ACMA or another person.

No provision has been made for merits review of a decision to give a notice under subsection 11(1), or to withdraw a notice under subsection 11(3). The effect of a notice under subsection 11(1) is to temporarily remove the exemption for use of a PMTS jamming device by CSNSW and its staff and contractors, for the period specified in the notice and at the location specified in the notice. Possession of the device will still be covered by the exemption. Judicial review of the decision to give a notice or withdraw a notice will be available.

Section 12 Request – information about PMTS jamming device

Subsection 12(1) allows for an authorised person to make a written request to CSNSW to provide the following information for each PMTS jamming device used, operated or possessed by CSNSW or CSNSW staff:

- the location of the device at a relevant facility;
- the frequencies that the PMTS jamming device is capable of being operated on;
- a test report for the device at the facility that complies with subsection 10(9);
- any information that the authorised person considers to be necessary or convenient to request for the purposes of managing interference to radiocommunications.

Subsection 12(2) provides that CSNSW must comply with such a request within 10 business days, or such longer period as agreed by an authorised person. Subsection 12(3) provides that an authorised person may withdraw a request made under subsection (1).

No provision has been made for merits review of a decision to give a notice under subsection 12(1) or to withdraw a request under subsection 12(3). The effect of a request is to temporarily remove the exemptions in relation to a PMTS jamming device only where CSNSW has not complied with the request. The power to obtain information and documents relating to a PMTS jamming device is important in allowing the ACMA to manage the risk of interference to PMTS outside a relevant facility. Judicial review of the decision to make a request, or to withdraw a request, will be available.

Section 13 Transitional – continuing acts and omissions

Section 13 sets out the transitional arrangements in relation to an act or omission that was exempt under the 2016 exemption determination or the 2018 exemption determination and that continue after the commencement of the Determination.

Subsection 13(1) provides that the transitional provision applies to an act or omission by CSNSW, a member of CSNSW staff, or a CSNSW contractor that:

- started to be performed, or that started to occur, before the commencement of the Determination; and
- continued to be performed, or continued to occur, after the commencement of the Determination; and
- immediately before the commencement of the Determination, was exempt from Part 3.1, Part 4.1 and Part 4.2 of the Act under either the 2016 exemption determination or the 2018 exemption determination.

Subsection 13(2) sets out the transitional arrangements for an act that continues after the determination commences. The act will continue to be exempt:

- if at the time the act started to be performed, the act was exempt under the 2016 exemption determination – where the circumstances specified in subsection 7(3) (other than paragraph (d)) of that determination continue to exist until the act ceases to be performed;

- if at the time the act started to be performed, the act was exempt under the 2018 exemption determination – the circumstances specified in subsection 7(2) of that determination continue to exist until the act ceases to be performed.

Subsection 13(3) sets out the transitional arrangements for an omission that continues after the Determination commences. The omission will continue to be exempt if all of the circumstances specified in subsections 10(2), 10(3), 10(4), 10(7) and 10(8) of the Determination existed at the time the Determination commenced and continue to exist until the omission ceases to occur.

Section 14 Transitional – existing liaison agreements

Section 14 provides that existing carrier liaison agreements under the 2016 exemption determination and the 2018 exemption determination can be used for up to 6 months after the commencement of the Determination; after that, new carrier liaison agreements will need to be in place in accordance with section 10 of the Determination.

Statement of compatibility with human rights

Prepared by the Australian Communications and Media Authority under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Radiocommunications (Exemption – Corrective Services NSW) Determination 2021

Overview of the instrument

The ACMA has made the *Radiocommunications (Exemption – Corrective Services NSW) Determination 2021 (the Determination)* to exempt Corrective Services NSW (CSNSW) and its staff and contractors from Part 3.1, Part 4.1 and Part 4.2 of the *Radiocommunications Act 1992 (the Act)* in relation to the use, operation, possession or supply of public mobile telecommunications (PMTS) jamming devices for the Goulburn Correctional Complex and Lithgow Correctional Centre.

Broadly speaking, Part 3.1 of the Act makes it an offence, and subject to a civil penalty, to operate or possess a radiocommunications device without a licence authorising the device. Part 4.1 of the Act makes it an offence, and subject to a civil penalty, to contravene an obligation or prohibition in equipment rules made under the Act, and to operate, possess or supply a device subject to a permanent ban. By virtue of the [*Radiocommunications \(Prohibition of PMTS Jamming Devices\) Declaration 2011 \(the Declaration\)*](#), PMTS jamming devices are subject to a permanent ban. Part 4.2 of the Act creates offences and civil penalty provisions in relation to the causation of interference.

Subsection 27(2) of the Act allows the ACMA to determine in writing that acts or omissions by members of a class of persons to whom subsection 27(1) of the Act applies are exempt from compliance with any or all or specified provisions of Parts 3.1, 4.1 and 4.2 of the Act. The Determination provides that CSNSW is an eligible body under subparagraph 27(1)(be)(ii) of the Act, and exempts acts or omissions by CSNSW and its staff and contractors relating to the operation, use, possession or supply of a PMTS jamming device at the Goulburn Correctional Complex and Lithgow Correctional Centre.

The purpose of the Determination is to allow the operation or use of a PMTS jamming device at the Goulburn Correctional Complex and Lithgow Correctional Centre to prevent illicit mobile phone use and to minimise the conduct of criminal activities, without causing interference to PMTS outside the perimeter of the correctional facilities.

Human rights implications

The ACMA has assessed whether the Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Determination engages the right to freedom of opinion and expression in Article 19 of the *International Covenant on Civil and Political Rights (the ICCPR)*.

Explanatory Statement to the Radiocommunications (Exemption – Corrective Services NSW) Determination 2021

Right to freedom of opinion and expression

Article 19 of the ICCPR provides:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others;
 - b. For the protection of national security or of public order (*ordre public*), or of public health or morals.

The use of PMTS jamming devices is intended to prevent the unlawful use of mobile phones at the Goulburn Correctional Complex and the Lithgow Correctional Centre, and therefore impacts upon the freedom of expression of people at those locations. However, the Determination is not incompatible with the right engaged as the limitation is reasonable, necessary and proportionate to the achievement of the legitimate objective of preventing the use of mobile phones in a correctional facility.

It is an offence under section 253F of the *Crimes (Administration of Sentences) Act 1999* (NSW) for an inmate to, without reasonable excuse, use or have in his or her possession in a place of detention, a mobile phone, SIM card or charger, or any part of a mobile phone, SIM card or charger. The use of mobile phones by inmates is a threat to the proper administration of correctional facilities and is contrary to the objectives of imprisonment. It can be difficult to detect the use and possession of mobile phones in correctional facilities. Use of PMTS jamming devices will potentially help to reduce criminal activities and intimidation amongst inmates, which should mean improved public safety outcomes and better correctional facility management.

The granting of an ongoing exemption for CSNSW under the Determination follows successful:

- field trials for the use and operation of PMTS jamming devices at Goulburn Correctional Complex and Lithgow Correctional Centre; and
- the ongoing use and operation of a PMTS jamming device at Lithgow Correctional Centre.

The ACMA will, however, monitor CSNSW's use of the PMTS jamming devices at both prisons to ensure the exemption remains appropriate and reasonable.

Conclusion

The Determination is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to the achievement of a legitimate objective; namely the prevention of criminal activities and the preservation of public safety within the correctional facilities.