



## **Radiocommunications (Exemption – Corrective Services NSW) Determination 2021**

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The Australian Communications and Media Authority makes the following determination under subparagraph 27(1)(be)(ii) and subsection 27(2) of the *Radiocommunications Act 1992*.

Dated: 25 November 2021

Fiona Cameron  
[signed]  
Member

Creina Chapman  
[signed]  
Member/~~General Manager~~

Australian Communications and Media Authority

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## 1 Name

This is the *Radiocommunications (Exemption – Corrective Services NSW) Determination 2021*.

## 2 Commencement

This instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation.

Note: The Federal Register of Legislation may be accessed, free of charge, at [www.legislation.gov.au](http://www.legislation.gov.au).

## 3 Authority

This instrument is made under subparagraph 27(1)(be)(ii) and subsection 27(2) of the *Radiocommunications Act 1992*.

## 4 Repeal

- (1) The *Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018* [F2018L01185] is repealed.
- (2) The *Radiocommunications (Testing and Field Trial by Corrective Services NSW of PMTS Jamming Devices at Goulburn Correctional Complex) Exemption Determination 2016* [F2016L01286] is repealed.

## 5 Repeal of this instrument

This instrument is repealed at the start of the day that is the fifth anniversary of the day it commences.

## 6 Interpretation

- (1) In this instrument, unless the contrary intention appears:

*ACMA Act* means the *Australian Communications and Media Authority Act 2005*.

*ACMA staff* has the same meaning as in section 3 of the ACMA Act.

*Act* means the *Radiocommunications Act 1992*.

*authorised person* means each of:

- (a) the ACMA;
- (b) a member, within the meaning of the ACMA Act;
- (c) a member of the ACMA staff that is an SES employee or acting SES employee.

Note: *SES employee* and *acting SES employee* are defined in the *Public Service Act 1999* and referred to in the *Acts Interpretation Act 1901*.

*base transmit frequency* means a frequency that:

- (a) is a designated frequency; and
- (b) either:
  - (i) falls within a part of the spectrum specified in the core condition of a spectrum licence mentioned in paragraph 66(1)(a) of the Act; or

- (ii) is specified, or is within a frequency channel specified, in an apparatus licence for the purposes of paragraph 108(2)(c) of the Act; and
- (c) is used, or may be used, under the licence by a radiocommunications device that is a base station for transmission of radiocommunications.

**carrier liaison agreement** means an agreement between New South Wales, Corrective Services NSW, or a member of CSNSW staff, and one or more relevant carriers in relation to the use, operation, possession or supply of a PMTS jamming device at a relevant facility.

**Corrective Services NSW** has the same meaning as in section 3 of the Sentences Act.

**CSNSW contractor** means:

- (a) a person who has a contract with Corrective Services NSW, or with a member of CSNSW staff, in relation to the use, operation, possession or supply of a PMTS jamming device at a relevant facility (**contractor**); and
- (b) a person employed or engaged by a contractor in relation to the use, operation, possession or supply of a PMTS jamming device at a relevant facility.

**CSNSW staff** means each person specified in section 231 of the Sentences Act.

**designated frequency** means a frequency in a frequency band used for the supply of a public mobile telecommunications service.

**harmful interference**, in relation to radiocommunications, means interference that obstructs, repeatedly interrupts, or seriously degrades a radiocommunications service that is operating in accordance with the Radio Regulations or the spectrum plan.

**non-designated frequency** means a frequency that is not a designated frequency.

**PMTS jamming device** has the same meaning as in:

- (a) section 4 of the *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011*;
- (b) if another legislative instrument made under subsection 172(1) of the Act is expressed to replace that instrument – the other legislative instrument.

Note 1: The *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011* is available, free of charge, from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

Note 2: The *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011* has effect as if it had been made under subsection 172(1) of the Act; see item 49 of Schedule 4 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

**public mobile telecommunications service** has the same meaning as in section 32 of the *Telecommunications Act 1997*.

**Radio Regulations** means the document titled ‘Radio Regulations’, published by the International Telecommunication Union.

Note 1: The Radio Regulations published by the International Telecommunication Union are not regulations made by the Governor-General under the Act.

Note 2: The Radio Regulations are available, free of charge, from the International Telecommunication Union’s website at [www.itu.int](http://www.itu.int).

**relevant carrier** means each of:

- (a) Optus Mobile Pty Limited (ACN 054 365 696);
- (b) NBN Co Limited (ACN 136 533 741);
- (c) subject to subsection (3), Telstra Corporation Limited (ACN 051 775 556);
- (d) TPG Telecom Limited (ACN 096 304 620).

Note: At the time this instrument was made, each relevant carrier was a carrier within the meaning given by the *Telecommunications Act 1997*.

**relevant facility** means each of the following:

- (a) the Goulburn Correctional Complex located at Maud Street, Goulburn, New South Wales;
- (b) the Lithgow Correctional Centre located at 596 Great Western Highway, Marrangaroo, New South Wales.

**Sentences Act** means the *Crimes (Administration of Sentences) Act 1999* (NSW).

Note 1: The Sentences Act is available, free of charge, from the New South Wales legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

Note 2: A number of other expressions used in this instrument are defined in the Act, including the following:

- (a) ACMA;
- (b) apparatus licence;
- (c) frequency band;
- (d) interference;
- (e) operate;
- (f) radiocommunication;
- (g) radio emission;
- (h) spectrum licence;
- (i) spectrum plan.

- (2) In this instrument, a reference to a part of the spectrum, a frequency band or a frequency range includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

Note: This means the lower number in the reference to a part of the spectrum, a frequency band or a frequency range is not included in the part of the spectrum, the frequency band or the frequency range.

- (3) If:

- (a) Telstra Limited (ACN 086 174 781) holds a carrier a licence; and
  - (b) Telstra Corporation Limited (ACN 051 775 556) notifies Corrective Services NSW, in writing, that for the purposes of this instrument Telstra Limited (ACN 086 174 781) is taken to be a relevant carrier from a particular time (the **transfer time**);
- the reference to Telstra Corporation Limited (ACN 051 775 556) in paragraph (c) of the definition of relevant carrier in subsection (1) is, after the transfer time, taken to be a reference to Telstra Limited (ACN 086 174 781).

Note: For paragraph (b), see subsection 27(2A) of the Act.

## 7 References to other instruments

In this instrument, unless the contrary intention appears:

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

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

Note 3: See section 314A of the Act.

## **8 Application of section 27 of the Act – Corrective Services NSW**

For the purposes of paragraph 27(1)(be) of the Act, Corrective Services NSW is a body to which section 27 of the Act applies.

## **9 Exemption – Corrective Services NSW, CSNSW staff and CSNSW contractors**

- (1) Subject to section 13, an act or omission by Corrective Services NSW is exempt from:
  - (a) all of Part 3.1 of the Act;
  - (b) all of Part 4.1 of the Act; and
  - (c) all of Part 4.2 of the Act;in the circumstances specified in section 10.
- (2) Subject to section 13, an act or omission by a person who is a member of CSNSW staff is exempt from:
  - (a) all of Part 3.1 of the Act;
  - (b) all of Part 4.1 of the Act; and
  - (c) all of Part 4.2 of the Act;in the circumstances specified in section 10.
- (3) Subject to section 13, an act or omission by a person who is a CSNSW contractor is exempt from:
  - (a) all of Part 3.1 of the Act;
  - (b) all of Part 4.1 of the Act; and
  - (c) all of Part 4.2 of the Act;in the circumstances specified in section 10.

## **10 Exemption – circumstances in which the exemptions apply**

- (1) The exemption in each of subsections 9(1), (2) and (3) applies only if all the circumstances set out in this section exist.
- (2) The act or omission must be in relation to the:
  - (a) use; or
  - (b) operation; or
  - (c) possession; or
  - (d) supply;of a PMTS jamming device.
- (3) The act must be performed, or the omission must occur, at a relevant facility.
- (4) At the time the act is performed, or the omission occurs:
  - (a) a carrier liaison agreement in relation to each of the relevant carriers must be in force; and
  - (b) the following details of each carrier liaison agreement must be published on the website of Corrective Services NSW:
    - (i) the name of each carrier that is a party to the agreement;
    - (ii) the date the agreement was entered;
    - (iii) a brief description of the nature of the liaison, between Corrective Services NSW and the carrier, required by the agreement.

Note 1: The website of Corrective Services NSW is found at [www.correctiveservices.dcj.nsw.gov.au](http://www.correctiveservices.dcj.nsw.gov.au).

Note 2: For agreements that existed at the commencement of this instrument, see section 14.

- (5) One of the following must be the case at the time the act is performed, or the omission occurs:
- (a) an authorised person has not given Corrective Services NSW a notice under section 11; or
  - (b) both:
    - (i) an authorised person has given Corrective Services NSW a notice under section 11; and
    - (ii) the notice has been withdrawn; or
  - (c) both:
    - (i) an authorised person has given Corrective Services NSW a notice under section 11; and
    - (ii) the period specified in the notice has ended; or
  - (d) both:
    - (i) an authorised person has given Corrective Services NSW a notice under section 11; and
    - (ii) the act is performed, or the omission occurs, at a location other than the location specified in the notice.
- (6) Before the act is performed or the omission occurs, Corrective Services NSW must have complied with every request made under section 12 that has not been withdrawn.
- (7) If the act or omission relates to the use or operation of a PMTS jamming device at a relevant facility, before the act is performed or the omission occurs, Corrective Services NSW must have provided to the ACMA, in writing, the following information about the device:
- (a) the location of the PMTS jamming device within the facility;
  - (b) the frequencies on which the PMTS jamming device is capable of being operated;
  - (c) a test report in relation to the device at the facility that complies with subsection (9).
- (8) If the act or omission relates to the use or operation of a PMTS jamming device, the use or operation of the device:
- (a) must be for the sole purpose of causing harmful interference to radiocommunications on designated frequencies within a relevant facility;
  - (b) if the use or operation of the device causes harmful interference – must cause harmful interference only to radiocommunications on base transmit frequencies within a relevant facility;
  - (c) must not cause radio emissions with a power spectral density greater than - 128.5 dBm/kHz on non-designated frequencies outside of a relevant facility; and
  - (d) must comply with Part 3 of the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* as if the PMTS jamming device were a radiocommunications transmitter operated under an apparatus licence to which that Part applies.
- Note: The *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015* is available, free of charge, from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).
- (9) For the purposes of paragraphs (7)(c) and 12(1)(c), a test report in relation to a PMTS jamming device at a relevant facility must contain such information as to allow a person to assess whether the circumstances set out in subsection (8) would exist if the device were used or operated within a relevant facility.

Note: The *Radiocommunications (Testing and Field Trial by Corrective Services NSW of PMTS Jamming Devices at Goulburn Correctional Complex) Exemption Determination 2016*, which has been repealed by this instrument, is available, free of charge, from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

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

- (1) For the purposes of subsection 10(5), an authorised person may give Corrective Services NSW a written notice that a PMTS jamming device must not be used at a location specified in the notice, during a period specified in the notice.

Note: See subsection 27(2A) of the Act.

- (2) The notice must specify a location that is, or is within, a relevant facility.
- (3) An authorised person may, by written notice given to Corrective Services NSW, withdraw a notice given under subsection (1).
- (4) The ACMA must publish on its website a copy of:
  - (a) each notice given under subsection (1);
  - (b) each notice given under subsection (3).

Note: The website of the ACMA is found at [www.acma.gov.au](http://www.acma.gov.au)

### **12 Request – information about PMTS jamming device**

- (1) An authorised person may request, in writing, that Corrective Services NSW provide some or all of the following information in relation to each PMTS jamming device used, operated or possessed by Corrective Services NSW or CSNSW staff:
  - (a) the location of the device at a relevant facility;
  - (b) the frequencies on which the device is capable of being operated;
  - (c) a test report in relation to the device at the facility that complies with subsection 10(9);
  - (d) any information the authorised person considers necessary or convenient to request in order to manage interference to radiocommunications.

Note: See subsection 27(2A) of the Act.

- (2) Corrective Services NSW must comply, in writing, with a request under subsection (1) within 10 business days of receiving the request, or such longer period as agreed by an authorised person.
- (3) An authorised person may, in writing given to Corrective Services NSW, withdraw a request made under subsection (1).

### **13 Transitional – continuing acts and omissions**

- (1) This section applies in relation to an act or an omission by Corrective Services NSW, a member of CSNSW staff, or a CSNSW contractor that:
  - (a) started to be performed, or that started to occur, before the commencement of this instrument; and
  - (b) continued to be performed, or continued to occur, after the commencement of this instrument; and
  - (c) immediately before the commencement of this instrument, was exempt from Part 3.1, Part 4.1 and Part 4.2 of the Act under either:
    - (i) the *Radiocommunications (Testing and Field Trial by Corrective Services NSW of PMTS Jamming Devices at Goulburn Correctional Complex) Exemption Determination 2016*; or

- (ii) the *Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018*.

Note: The *Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018* is available, free of charge, from the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

- (2) If this section applies in relation to an act, that act continues to be exempt after the commencement of this instrument if:
- (a) where the act, when it started to be performed, was exempt under the *Radiocommunications (Testing and Field Trial by Corrective Services NSW of PMTS Jamming Devices at Goulburn Correctional Complex) Exemption Determination 2016* – the circumstances specified in paragraphs 7(3)(a) to (c) and (e) to (i) of that determination continue to exist until the act ceases to be performed;
  - (b) where the act, when it started to be performed, was exempt under the *Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018* – the circumstances specified in subsection 7(2) of that determination continue to exist until the act ceases to be performed.
- (3) If this section applies in relation to an omission, that omission continues to be exempt after the commencement of this instrument if all of the circumstances specified in subsections 10(2), 10(3), 10(4), 10(6), 10(7) and 10(8):
- (a) exist at the commencement of this instrument; and
  - (b) continue to exist until the omission ceases to occur.

#### **14 Transitional – existing liaison agreements**

- (1) This section applies if:
- (a) immediately before the commencement of this section, each agreement mentioned in paragraph 7(1)(c) of the *Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018*, as in force at that time, was in force; and
  - (b) immediately before the commencement of this section, each agreement mentioned in paragraph 6(3)(c) of the *Radiocommunications (Testing and Field Trial by Corrective Services NSW of PMTS Jamming Devices at Goulburn Correctional Complex) Exemption Determination 2016*, as in force at that time, was in force.
- (2) If this section applies, then for the period commencing at the time this section commences and ending on the earlier of:
- (a) 6 months after the commencement of this section; or
  - (b) the time the first of the agreements mentioned in subsection (1) ceases to be in force;
- the circumstance in paragraph 10(4)(a) is taken to exist.
- (3) This section does not imply that an agreement mentioned in subsection (1) is not, or cannot be, a carrier liaison agreement.