EXPLANATORY STATEMENT
Issued by the Australian Communications and Media Authority

Radiocommunications (Bench Testing by Corrective Services NSW of Mobile Telephone Jamming Device) Exemption Determination 2010

Radiocommunications Act 1992

Purpose
The purpose of the Radiocommunications (Bench Testing by Corrective Services NSW of Mobile Telephone Jamming Device) Exemption Determination 2010 (the Determination) is to:

- determine for the purposes of paragraph 27(1)(be) of the Radiocommunications Act 1992 (the Act) that Corrective Services NSW (CSNSW) is a body to which section 27 of the Act applies; and to
- establish the circumstances in which specified CSNSW staff will be allowed to undertake bench testing of mobile telephone jamming devices.

Mobile telephone jamming devices are designed to interfere with, disrupt or disturb radiocommunications frequencies that are used to support the public mobile telecommunications service (PMTS). In 1999, the Australian Communications Authority (ACA) made the Notification that the Australian Communications Authority prohibits the operation or supply, or possession for the purpose of operation or supply, of specified devices 1999 (the Mobile Phone Jammer Prohibition). As a result, mobile telephone jamming devices are prohibited under section 189 of the Act. Subsection 27(2) of the Act provides that the ACMA may make a determination that acts or omissions by members of a class of persons to whom section 27 applies are exempt from all or any of Parts 3.1, 4.1 or 4.2 of the Act, including section 189.

CSNSW has requested that the ACMA make an exemption determination under section 27(2) of the Act to enable them to conduct a field trial of mobile telephone jamming devices at Lithgow Correctional Centre, NSW (the Lithgow trial). To be eligible for a section 27(2) exemption determination, an organisation must fall within the scope of subsection 27(1) of the Act. CSNSW is not listed in subsection 27(1) of the Act. Paragraph 27(1)(be) provides that the ACMA may make a determination in respect of a body that “performs functions related to the investigation, prevention or prosecution of serious crime, or of corruption.” As such, section 27(1) of the Act will apply to that body. The Determination specifies that CSNSW falls within the scope of section 27(1) on the basis that it is a body that performs functions related to the investigation, prevention or prosecution of serious crime, or of corruption.

As a precursor to the proposed Lithgow trial, CSNSW will be conducting bench testing of candidate mobile telephone jamming devices to determine which devices are most suitable for use in the Lithgow trial. To enable this bench testing, the ACMA has made the Determination to provide CSNSW staff (and persons acting on behalf of CSNSW in prescribed circumstances) with an exemption from Parts 3.1, 4.1 and 4.2 of the Act. To this end, the Determination specifies the circumstances in which persons performing a function

1 Made under section 190 of the Act.
2 For the purposes of paragraph 27(1)(be) of the Act.
or duty in relation to CSNSW will be allowed to use, operate, supply or possess a mobile telephone jamming device.

The Determination also specifies requirements concerning the provision of a report on the outcomes of the bench testing to the ACMA, procedures for the proper disposal of the mobile telephone jamming devices and the circumstances under which CSNSW is to notify the ACMA and PMTS carriers of any interference that occurs outside the shielded environment in which the bench testing is to occur. The bench testing must occur during the three month period from the date of commencement of the Determination, after which time the Determination will cease to have effect.

Legislative Provisions

The Act is the primary legislation under which the ACMA regulates radiofrequency spectrum in Australia. In general, the Act requires that the use of radiocommunications devices:

- be licensed (Part 3.1);
- meet certain standards and other technical requirements (Part 4.1); and
- be conducted so as to avoid causing disruption or unacceptable interference to other radiocommunications services (Part 4.2).

Part 3.1 of the Act identifies certain actions as offences. For example, a person must not, without reasonable excuse, operate an unlicensed radiocommunications device, nor have such a device in their possession for any reason (see sections 46 and 47 of the Act).

Part 4.1 of the Act provides for standards and other technical regulation. It imposes prohibitions relating to non-standard devices whilst providing exceptions to those prohibitions. The Part enables the ACMA to make standards for devices and the radio emissions they produce, and to create requirements for compliance labelling. Section 190 in Part 4.1 provides that the ACMA can make a declaration declaring that specified devices are prohibited because of their effect on radiocommunications.

Division 8 of Part 4.1 of the Act includes section 189 of the Act, which provides that a person must not operate or supply a device that the person knows is a device in respect of which a declaration is in force under section 190; or have a device that the person knows, or ought reasonably to know, is such a device in his or her possession for the purpose of operating or supplying the device.

Part 4.2 provides that certain acts are offences under the Act. The offences include causing substantial interference to radiocommunications services, more specifically interference to the radiocommunications of certain emergency services, and interference likely to endanger safety. Other offence provisions relate to the transmission of false information or information likely to cause an explosion.

Subsection 27(2) of the Act allows the ACMA to determine that acts or omissions by members of a class of persons, to whom subsection 27(1) 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) of the Act, the ACMA may, by written determination, establish 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 constituted by a “class of persons” to which section 27(1) applies.\(^3\)

A determination made under paragraph 27(1)(be) or section 27(2) of the Act is a legislative instrument for the purposes of the \textit{Legislative Instruments Act 2003} (Cth).

\textbf{Background}

The ACA made the Mobile Phone Jammer Prohibition because the radiocommunications interference potential of mobile telephone jamming devices is considerable. Furthermore, the ACA was not aware of any legitimate uses for mobile telephone jamming devices at the time.

Since then, members of the corrective services community have requested that the ACMA consider permitting the use of mobile telephone jamming devices in prisons. After discussions between the ACMA, the Attorney-General’s Department and the Corrective Services Administrators Council (CSAC), CSAC developed an action plan which was endorsed by the Corrective Services Ministers’ Conference (CSMC) in June 2008. As a first step in the action plan, CSAC provided the ACMA with a submission about the use of mobile phones in prisons in March 2009.

On 23 March 2009, the ACMA endorsed the Review of the Mobile Phone Jammer Prohibition. This Review was established to consider the scope and operation of the Mobile Phone Jammer Prohibition in light of recent technological developments and potentially legitimate uses for these devices. At the same time as approving the Review, the ACMA also provided in-principle approval for the trial of mobile telephone jamming devices in a prison.

To this end, CSNSW has sought the ACMA’s permission to conduct a trial of mobile telephone jamming devices to help inform decision making on whether it is in the public interest to allow deployment of mobile telephone jamming devices in NSW correctional facilities. The use of mobile phones by prison 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,\(^4\) detection of possession and use of mobile phones can be difficult. The use of mobile phones allows prisoners to continue to be involved in criminal activity outside the confines of the prison. This is a threat to the proper administration of correctional facilities and is contrary to the objectives of imprisonment.

After discussions between ACMA staff, CSNSW and mobile telephone carriers, it was agreed that the Lithgow field trial be preceded by bench testing of candidate devices in a shielded environment. The intention of the bench testing is to ensure that appropriate mobile telephone jamming device(s) are selected for use in the field trial. Should the Lithgow trial go ahead, the ACMA, in consultation with CSNSW and mobile phone carriers, has established strict technical parameters under which the devices are to operate. The commencement of the field trial is contingent upon the bench testing results demonstrating that the mobile telephone jamming devices meet these parameters. A separate exemption

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\(^3\) Subsection 27(4) of the Act provides that for the purpose of subparagraph(1)(be)(i), serious crime is conduct that, if engaged in within, or in connection with, Australia, would constitute an offence against the law of the Commonwealth, a State or a Territory punishable by the imprisonment for a period exceeding 12 months.

\(^4\) Under section 27DA(1) of the \textit{Summary Offences Act 1988}
determination made under subsection 27(2) will be required to facilitate the proposed Lithgow trial.

Operation of the Determination

The Determination sets out the circumstances in which specified persons that perform a function or duty in relation to CSNSW can supply, possess and operate a mobile telephone jamming device and will be exempt from Parts 3.1, 4.1 and 4.2 of the Act.

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003*, the ACMA has consulted directly with those bodies that are likely to be affected by the Determination. The Lithgow Trial Working Group, Department of Broadband, Communications and the Digital Economy, Attorney-General’s Department and the Department of Defence were provided with a draft of the Determination and invited to provide comment. The Lithgow Trial Working Group is comprised of representatives from the ACMA, CSNSW, Kordia Solutions Pty Ltd, Optus, Vodafone Hutchison Australia and Telstra.

Regulatory Impact

The Office of Best Practice and Regulation (OBPR) has considered the matter and formed the opinion that no further regulatory impact analysis is required. The OBPR reference number is 11674.

Attachment

Further details about the Determination are provided in the Attachment.
NOTES ON SECTIONS

Section 1  Name of Determination

Section 1 provides for the citation of the Determination as the Radiocommunications (Bench Testing by Corrective Services NSW of Mobile Telephone Jamming Device) Exemption Determination 2010.

Section 2  Commencement

Section 2 provides for the Determination to commence on the day after it is registered.

Section 3  Definitions

Section 3 defines terms used throughout the Determination. The following terms are worthy of note:


- **bench testing** means the initial testing of the mobile telephone jamming device undertaken in a shielded environment by a bench testing participant to ascertain the appropriate technical parameters for the field trial.

- **bench testing participant** has the same meaning as in section 6(2) of this exemption determination. Section 6(2) of the Determination states that a ‘bench testing participant’ means "a person who is performing a function or duty in relation to Corrective Services NSW and who is:
  a) a member of Corrective Services NSW staff; or
  b) a person acting on behalf of Corrective Services NSW who is:
      o performing a function or duty, under a contract with Corrective Service NSW in relation to the bench testing; and
      o under the direct supervision of a member of Corrective Services NSW staff when the act is done, or the omission occurs.

- **bench testing period** means the period of three months from the date on which the Determination commences.

- **Corrective Services NSW** has the same meaning as in the Crimes (Administration of Sentences) Act 1999 (NSW).

- **Corrective Services NSW staff** means the staff who are employed within Corrective Services NSW and who are principally involved in the administration of the Crimes (Administration of Sentences) Act 1999 (NSW).

- **designated frequencies** means any of the following frequencies:
  o 870-890 MHz
  o 935-960 MHz
- 1805-1880 MHz
- 2110-2170 MHz.

- **field trial** means the proposed mobile telephone jamming device field trial to be conducted by Corrective Services NSW at the Lithgow Correctional Centre.
- **Lithgow Correctional Centre** means the maximum security centre at 596 Great Western Highway, Marrangaroo in New South Wales.
- **mobile telephone jamming device** means a device designed to interfere with, disrupt or disturb radiocommunications frequencies that are used to support the public mobile telecommunications service.
- **shielded environment** means an operating environment where radiofrequency transmissions from a mobile telephone jamming device are confined by means of a screened room that provides attenuation that reduces the level of transmissions to the mean level of noise in the surrounding area.\(^5\)

**Section 4**  Corrective Services NSW is a body for the purposes of para 27(1)(be) of the Act

Section 4 provides that CSNSW is a body that performs functions related to the investigation, prevention or prosecution of serious crime, or of corruption, and therefore is a body to which section 27 of the Act applies.

**Section 5**  Determination ceases to have effect

Section 5 provides that the Determination ceases to have effect at the conclusion of the bench testing period, which is three months from the date of commencement of the Determination.

**Section 6**  Exemption in relation to certain activities by Corrective Services NSW staff

Subsection 6(1) specifies the circumstances in which acts or omissions of CSNSW staff relating to the operation, possession or supply of a mobile telephone jamming device will be exempt from Parts 3.1, 4.1 and 4.2 of the Act. This subsection specifies that the CSNSW staff must be a bench testing participant, which is defined under subsection 6(2) as someone who is either a member of CSNSW staff or a contractor acting on behalf of CSNSW under the direct supervision of a member of CSNSW staff.

Subsection 6(3) stipulates that the exemption will only apply when a mobile telephone jamming device is operated for the purpose of the bench testing, within a shielded environment and at the designated frequencies. In relation to possession of a mobile telephone jamming device, the mobile telephone jamming device must be stored and transported securely. This subsection also limits the number of devices that CSNSW can import for the purpose of the bench testing to three mobile telephone jamming devices. Further, mobile telephone jamming devices must be operated in accordance with the ARPANSA Standard.

\(^5\) Note: This definition is drawn from the *Radiocommunications Licence Conditions (Scientific Licence) Determination 1997*, paragraph 8(2)(b)
Section 7 Corrective Services NSW to provide the ACMA with a report on the bench testing

The purpose of the Determination is to allow CSNSW to conduct bench testing to determine which mobile telephone jamming devices are most appropriate for use in the Lithgow trial. Whether a particular mobile telephone jamming device is fit for this purpose will depend on whether data collected by CSNSW during the course of the bench testing indicates that it will conform to the technical parameters established for the Lithgow trial. If it does, the ACMA will make the legislative instruments required to permit the Lithgow trial. To this end, under section 7 of the Determination, CSNSW are required to provide a report on the outcomes of the bench testing.

Section 7 requires CSNSW to provide the ACMA with a report outlining the results of the bench testing within six weeks of the commencement of the Determination. The report must include details of the particular mobile telephone jamming devices that have been selected and data that demonstrates that they render mobile telephones at the designated frequencies inoperable. Further, the report must include data confirming that the preferred mobile telephone jamming devices will not emit out of band emissions beyond -128.5 dBm/kHz at the edge of the public exclusion zone around the Lithgow Correctional Centre.6

The report must also provide evidence that the mobile telephone jamming devices have been operated in accordance with the ARPANSA Standard.7 The report must also include information indicating that CSNSW has consulted PMTS carriers on the outcomes of the bench testing. Finally the report must detail the disposal process for the mobile telephone jamming devices that are deemed inappropriate for use in the field trial.

Section 8 Corrective Services NSW to dispose of devices used in the bench test trial

In circumstances where the Lithgow trial does not occur, paragraph 8(1)(a) requires that CSNSW must dispose of the mobile telephone jamming devices. Paragraph 8(1)(b) provides that CSNSW must also dispose of the mobile telephone jamming devices that are deemed inappropriate for use in the field trial. Where relevant, the disposal of the mobile telephone jamming devices must occur prior to the conclusion of the bench testing period. Subsection 8(2) provides that CSNSW can dispose of a mobile telephone jamming device by either a) destroying it b) surrendering it to the ACMA or c) returning the device to a person located outside of Australia.

Section 9 Notifying the ACMA and Public Mobile Telecommunications Service carriers

Subsection 9(1) requires CSNSW to notify the ACMA and relevant public mobile telecommunications service carriers 7 days prior to the commencement of the bench testing. Subsection 9(2) provides that the notification is to be in writing and must contain contact details, the intended time, duration and location of the bench testing and the relevant radiofrequencies.

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6 This is the emission limit that the ACMA has determined will sufficiently mitigate the risk of interference to licensed radiocommunications outside of the Lithgow Correctional Centre.
7 Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003
In the event of a complaint about interference to radiocommunications outside of the shielded environment in which the bench testing is occurring, subsection 9(3) requires CSNSW to provide the ACMA with a report within 72 hours of receiving the complaint. Subsection 9(4) provides that the report must include the name of complainant, the time and date the complaint was made, the nature of the complaint and whether it has been resolved.

Section 9(5) addresses the situation in which the use of the mobile telephone jamming device causes interference in relation to radiocommunications on frequencies designated for PMTS outside the shielded environment. In the event of such interference, CSNSW is required to notify the ACMA and each PMTS carrier that may be affected by the interference. CSNSW is also required to ensure that all reasonable steps are taken to cease any interference outside the shielded environment as soon as possible.