



Radiocommunications (Exemption – Bomb Disposal Electronic Counter Measures) Determination 2023

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

Dated: 9 March 2023

James Cameron
[signed]
Member

Cathy Rainsford
[signed]
~~Member~~/General Manager

Australian Communications and Media Authority

1 Name

This is the *Radiocommunications (Exemption – Bomb Disposal Electronic Counter Measures) Determination 2023*.

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 is available, free of charge, at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 27(2) of the *Radiocommunications Act 1992*.

4 Repeal

The *Radiocommunications (Prohibited Devices) (Use of Electronic Counter Measures for Bomb Disposal Activities) Exemption Determination 2010* [F2010L00821] is repealed.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This instrument is repealed at the start of the day that is the fifth anniversary of the day it commences.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*.

contractor means:

- (a) a person who has a contract with:
 - (i) a police force; or
 - (ii) the Commissioner or head of a police force, however described; or
 - (iii) the Commonwealth, a State or a Territory, for the benefit of a police force; in relation to an electronic counter measure device; and
- (b) a person employed or engaged by a person mentioned in paragraph (a) in relation to the contract mentioned in paragraph (a).

electronic counter measure device means a device that is designed to interfere with, disrupt, distort or disturb radiocommunications.

improvised explosive device means a thing made or placed in an improvised way that incorporates destructive, lethal, noxious, pyrotechnic or incendiary chemicals and is designed to destroy, incapacitate, harass or distract.

police force means each of:

- (a) the Australian Federal Police; and
- (b) the police force of each State and Territory.

potential contractor: see subsection (2).

primary potential contractor: see paragraph (2)(a).

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

- (a) ACMA;
- (b) device;
- (c) interference;
- (d) offer to supply;
- (e) operate;
- (f) radiocommunication.

- (2) If a person is capable of supplying an electronic counter measure device to a police force, then each of the following is a **potential contractor**:
 - (a) the person (**primary potential contractor**); and
 - (b) a person engaged or employed by that person in relation to the electronic counter measure device.

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 Exemption – police forces, contractors and potential contractors

- (1) An act or omission by a member of a police force or a contractor is exempt from:
 - (a) all of Part 3.1 of the Act; and
 - (b) all of Part 4.1 of the Act; and
 - (c) all of Part 4.2 of the Act;if both:
 - (d) one or more of the circumstances specified in section 9 exists; and
 - (e) all of the circumstances specified in section 10 exist.

(2) An act or omission by a potential contractor is exempt from:

- (a) subsection 170(2) of the Act; and
- (b) subsection 175(2) of the Act; and
- (c) subsection 176(2) of the Act;

if the circumstance specified in section 12 exists.

9 Exemption – general circumstances in which the exemption applies to police forces and contractors

(1) The exemption in subsection 8(1) applies only if one or more of the circumstances specified in this section exist.

Note: All of the circumstances specified in section 10 must also exist: see paragraph 8(1)(e).

- (2) The act is performed, or the omission occurs, for the purpose of preventing the detonation or use of an improvised explosive device.
- (3) The act is performed, or the omission occurs, in the course of, or for the purpose of, training a member of a police force in the operation and use of an electronic counter measure device to prevent the detonation or use of improvised explosive devices.
- (4) The act is performed, or the omission occurs, in relation to the supply of, or an offer to supply, an electronic counter measure device to a police force for the purpose of preventing the detonation or use of improvised explosive devices.
- (5) The act is performed, or the omission occurs, in relation to the testing of an electronic counter measure device that has been, or is proposed to be, supplied to a police force for the purpose of preventing the detonation or use of improvised explosive devices.
- (6) The act is performed, or the omission occurs, in relation to the maintenance or repair of an electronic counter measure device that has been, or is proposed to be, supplied to a police force for the purpose of preventing the detonation or use of improvised explosive devices.
- (7) The act is performed, or the omission occurs, in relation to research and development involving an electronic counter measure device for the purpose of preventing the detonation or use of improvised explosive devices.

10 Exemption – circumstances in which the exemption applies to police forces and contractors – record keeping

(1) The exemption in subsection 8(1) applies only if all the circumstances specified in this section exist.

Note: One or more of the circumstances specified in section 9 must also exist: see paragraph 8(1)(d).

- (2) If the act or omission involves the use or operation of an electronic counter measure device by a member of a police force, a member of that police force has recorded:
 - (a) the date, time and location of each prior use or operation of the device by a member of that police force; and
 - (b) the purpose for which the device was so used or operated.

- (3) If the act or omission involves the use or operation of an electronic counter measure device by a contractor in accordance with a contract in relation to a police force, a member of that police force has recorded:
 - (a) the date, time and location of each prior use or operation of the device by a contractor in relation to that police force; and
 - (b) the purpose for which the device was so used or operated.
- (4) If the act or omission is in relation to a particular police force, before the act is performed or the omission occurs, that police force must have complied with every request made to it under section 11 that has not been withdrawn.

11 Request – provision of records

- (1) An authorised person may request, in writing, that a police force provide the ACMA with a record kept under subsection 10(2) or subsection 10(3).

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

- (2) The police force must comply 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 the police force, withdraw a request made under subsection (1).

12 Exemption – circumstance in which the exemption applies to potential contractors

- (1) The exemption in subsection 8(2) applies only if the circumstance specified in this section exists.
- (2) The act is performed, or the omission occurs, for the purpose of the primary potential contractor offering to supply an electronic counter measure device to a police force.