

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Jamming Equipment) Permanent Ban 2023***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Jamming Equipment) Permanent Ban 2023* (**the instrument**) under subsection 172(1) and section 174 of the *Radiocommunications Act 1992* (**the Act**).

Under paragraph 172(1)(a) of the Act, the ACMA may impose a permanent ban on equipment of a specified kind if the ACMA is satisfied that equipment of that kind is designed to have an adverse effect on radiocommunications.

Section 174 of the Act provides that, if a permanent ban is in force, the ACMA may revoke the ban.

### **Purpose and operation of the instrument**

The instrument revokes the *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011* (**the PMTS Jamming Devices Prohibition**) and the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Declaration 2014* (**the RNSS Jamming Devices Prohibition**), which were due to sunset on 1 April 2023, and 1 April 2025, respectively. The PMTS Jamming Devices Prohibition and the RNSS Jamming Devices Prohibition were made under repealed section 190 of the Act. Item 49 of Schedule 4 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020* (**the Modernisation Act**) provides that certain instruments made under repealed section 190 of the Act continue to have effect as if they had been made under subsection 172(1) of the Act.

The instrument replaces the PMTS Jamming Devices Prohibition and the RNSS Jamming Devices Prohibition with a new permanent ban on the same equipment, and imposes a new ban on an additional type of equipment.

### *Banned equipment under the Act*

Permanent bans on equipment made under subsection 172(1) of the Act 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.

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 (\$275,000 on the current value of a penalty unit), or both. The maximum civil penalty payable is 1000 penalty units (\$275,000).

Where the ACMA has imposed a permanent ban on equipment, subregulation 4(2) of the *Customs (Prohibited Imports) Regulations 1956* (**the Customs Regulations**), made under the *Customs Act 1901*, provides that the importation into Australia of such equipment is prohibited, unless the conditions, restrictions or requirements for that equipment are met.

Permanent bans and the Customs Regulations therefore work together to help to prevent equipment designed to have an adverse effect on radiocommunications from entering Australia.

### *PMTS jamming equipment*

Equipment that is designed to cause interference to a public mobile telecommunications service (**PMTS**) can be used to block, or otherwise interfere with, radio emissions between a mobile station (for example, a mobile handset) and a base station. Such equipment can be used to prevent mobile stations from sending or receiving voice and data traffic to, or from, a telecommunications network. The interference generated by this type of equipment can affect the quality, reliability and coverage of PMTS.

Businesses and individuals rely on PMTS for voice and data services, as well as for mobile broadband. Preventing or otherwise disrupting the supply of those services has the potential to adversely affect the public on a large scale. For example, it may prevent access to emergency call services, result in loss of business or cause inconvenience to mobile phone users.

Equipment that is designed to adversely affect radiocommunications in this way is also at risk of being used in connection with criminal or terrorist activities.

The ACMA is satisfied that **PMTS jamming equipment**, as defined in section 6 of the instrument, is designed to have adverse effects on radiocommunications of the type described above.

The instrument provides that each of the following is PMTS jamming equipment:

- equipment that is both:
  - designed to have an adverse effect on radiocommunications; and
  - capable of operating on a frequency within a PMTS frequency band (whether or not it is capable of operating on another frequency);
- equipment that is designed to block radio emissions between:
  - a base station used in the provision of a public mobile telecommunications service; and
  - a mobile station;

whether or not the equipment is designed to have other purposes or consequences.

The terms **PMTS frequency band**, **public mobile telecommunications service** and **mobile station** are defined in section 5 of the instrument.

The scope of the permanent ban is confined to equipment that is designed to have an adverse effect on radiocommunications. It does not apply to equipment that is intended to provide a usable communications service to users. Subsection 6(2) of the instrument provides that **two-way communication equipment** (as defined in section 5 of the instrument) is not PMTS jamming equipment.

### *RLAN and RPAS jamming equipment*

Radio Local Area Network (**RLAN**) devices are radiocommunications systems used to provide wireless communications in a local area. RLAN devices include Wi-Fi routers and devices that use the same parts of the spectrum, such as Bluetooth devices. These devices largely operate on frequencies specified in, and are authorised by, the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015 (the Class Licence)*. Over the last few years, consumer and commercial drones – also called remotely piloted aircraft systems (**RPAS**) or unmanned aerial vehicles – have also become prominent users of this part of the spectrum.

RLAN and other devices authorised by the Class Licence play a key role in enabling innovation and broader social and economic connectivity. Wi-Fi calling and hotspots, and Wi-Fi and Bluetooth home security devices are also common uses of the relevant spectrum, and Wi-Fi technologies can also be used by network providers to improve cellular network capacity.

Equipment that is designed to cause interference to RLAN devices can be used to cause inconvenience (for example, by disrupting a connection between a mobile handset and a publicly available Wi-Fi hotspot), or be attractive to criminals (who may, for example, use the equipment to disable a home security system).

As the use of remotely piloted aircraft (**RPA**) and RPAS has become increasingly widespread, there are growing concerns about use of equipment designed to cause interference to RPAS, which could seriously threaten safety, security and property (for example, jamming RPAS radiocommunications can cause the RPA to crash).

The ACMA is satisfied that **RLAN and RPAS jamming equipment**, as defined in section 7 of the instrument, is designed to have adverse effects on radiocommunications of the type described above.

The instrument provides that RLAN and RPAS jamming equipment is equipment that:

- is capable of operating on a frequency within an RLAN and RPAS frequency band (whether or not it is capable of operating on another frequency); and
- is designed to do one or more of the following:
  - have an adverse effect on radiocommunications; or
  - block radio emissions between two or more RLAN devices (whether or not the equipment is designed to have other purposes or consequences); or
  - block radio emissions between two or more RPAS devices (whether or not the equipment is designed to have other purposes or consequences).

The terms **RLAN and RPAS frequency bands**, **RLAN device**, and **RPAS device** are defined in section 5 of the instrument.

The instrument ensures that the scope of the permanent ban is confined to equipment that is designed to have an adverse effect on radiocommunications, and that it does not inadvertently apply to equipment intended for legitimate uses other than communications. Industrial, scientific, medical and domestic equipment (such as plastic welders, microwave ovens, and chemical analysis equipment not used for communications) can generate electromagnetic energy in parts of the spectrum shared by RLAN and RPAS. That electromagnetic energy can, in some cases, cause interference to RLAN and RPAS, but the equipment is not designed to do so.

Accordingly, subsection 7(2) of the instrument provides that, if the principal purpose of equipment is an **industrial, scientific, medical, or domestic application** (as defined in subsection 5(1) of the instrument), the equipment is not RLAN and RPAS jamming equipment.

The instrument also ensures that the permanent ban does not inadvertently apply to equipment that is intended to provide a usable communications service to users.

Accordingly, subsection 7(3) of the instrument provides that two-way communication equipment is not RLAN or RPAS jamming equipment.

#### *RNSS jamming equipment*

The near-ubiquitous availability of the radionavigation-satellite service (**RNSS**), commonly referred to as the Global Positioning System or GPS), has seen it increasingly used in a wide range of consumer, commercial and public-purpose applications. It is critical to certain industries, including commercial aviation, and is also a feature incorporated into many emerging aviation technologies, such as RPAS.

The adverse effects of using equipment that is designed to cause interference to the RNSS and devices using frequencies allocated for use by the RNSS, may range from inconvenience to RNSS users, to threats to public safety, and disruption of the functioning of critical systems and infrastructure.

The disruptive and dangerous effects of using such equipment may make the equipment attractive for criminals or terrorists.

The ACMA is satisfied that **RNSS jamming equipment**, as defined in section 8 of the instrument, is designed to have adverse effects on radiocommunications of the type described above.

The instrument provides that each of the following is RNSS jamming equipment:

- equipment that is:
  - designed to have an adverse effect on radiocommunications; and
  - capable of operating on a frequency within an RNSS frequency band (whether or not it is capable of operating on another frequency);
- equipment that is designed to block radio emissions between:
  - an RNSS transmitter; and
  - an RNSS receiver;

whether or not the equipment is designed to have other purposes or consequences.

The terms **RNSS frequency band**, **RNSS receiver**, and **RNSS transmitter** are defined in section 5 of the instrument.

The instrument ensures that the scope of the permanent ban is confined to equipment that is designed to have an adverse effect on radiocommunications used for the RNSS, and that it does not inadvertently apply to equipment that is intended to provide beneficial RNSS services, typically by transmitting information that is sometimes referred to as Position, Navigation and Timing information. This information may be transmitted by devices known as RNSS repeaters, RNSS simulators, and pseudolites, which re-transmit or generate RNSS signals for a range of consumer, commercial and safety applications.

Accordingly, subsection 8(2) of the instrument provides that if equipment is designed to transmit information that can be used to determine both the location of an RNSS receiver, and the local time at the location when the location is determined, the equipment is not RNSS jamming equipment.

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

The instrument is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* (the **LA**).

The instrument is subject to the sunset provisions of the LA.

### **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 instrument incorporates by reference the *Telecommunications Act 1997*, as in force from time to time. It also refers to the following Acts, but does not incorporate them by reference:

- the Act;
- the *Australian Communications and Media Authority Act 2005*.

The instrument incorporates by reference the following legislative instruments, as in force from time to time:

- the *Radiocommunications (Interpretation) Determination 2015*, or any instrument made to replace that determination;
- the Class Licence, or any instrument made to replace the Class Licence.

These Acts and legislative instruments can be accessed, free of charge, on the Federal Register of Legislation (<http://www.legislation.gov.au>).

## Consultation

Before the instrument 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.

The ACMA undertook public consultation for the period from 7 July 2022 to 4 August 2022. A consultation paper and 3 separate draft permanent bans were made available for public comment on the ACMA website. The draft permanent bans were released as part of a broader consultation on draft instruments relating to banned equipment and exemptions under the Act.

The ACMA also directly notified stakeholders in a position to offer specialist views about the proposed arrangements. These stakeholders were: Airservices Australia; Australian Border Force; the Australian Federal Police (AFP); Australian Mobile Telecommunications Association (AMTA); Boeing; CASA; Corrective Services NSW; Department 13; Department of Defence; Department of Home Affairs; Department of Infrastructure, Transport, Regional Development, Communications and the Arts; DroneShield; NSW Crime Commission; Nova Systems; Open Spectrum; Optus; PACCAR Australia; Panasonic; Pivotal; QinetiQ; Telstra; TPG Telecom and Transport for NSW.

The ACMA received 8 submissions that offered commentary on the draft instruments included in the consultation, some of which offered specific views on the proposed permanent bans. Submissions were received from the AFP, Airservices Australia, AMTA, Department 13, DroneShield, Optus, Telstra and TPG Telecom.

Some stakeholders submitted that permanent bans in general, and some permanent bans in particular, should be drafted very precisely to exclude devices that have notionally lower risk profiles, that permanent bans could contemplate software or selective targeting technologies that can reduce interference risk, and that permanent bans should not apply to equipment that, while designed to have an adverse effect on radiocommunications, is also intended to be used to counter threats to the safety and security of persons and property.

Although there is, for example RLAN and RPAS jamming equipment and RNSS jamming equipment intended to be sold to law enforcement and similar bodies, there is often nothing inherently different about an item of banned equipment sold for use for law enforcement purposes and an item of banned equipment sold to malefactors. An instrument that attempted to make such a distinction would likely be very ineffective. Even if such “low risk” jamming equipment were not subject to a permanent ban, it would still be difficult to use that equipment without breaching the Act (including, for example, Part 4.2 of the Act, which contains offences and penalties relating to causing interference to radiocommunications).

Several stakeholders expressed the view that, in addition to applying to equipment of a kind that is designed to have an adverse effect on radiocommunications, the permanent bans should also apply to equipment of a specified kind where, pursuant to paragraph 172(1)(b) of the Act, the ACMA is satisfied that a reasonably foreseeable use (including misuse) of equipment of that kind would be likely to substantially interfere with radiocommunications, or disrupt or disturb radiocommunications in any other way. Some stakeholders conveyed that it would be preferable that the permanent bans remain broad in scope, and that individual items of equipment could be carved out as needed, or individually authorised on a case-by-case basis.

Such an approach is likely to result in permanent bans that were overly complex, and could produce situations where equipment that departed in very minor ways from equipment subject to a carve out, without posing any serious risk of interference, could be inadvertently banned. It is preferable to adopt a regulatory approach based on the principle that equipment that is not designed to cause interference should generally not be subject to a permanent ban, other than in exceptional circumstances.

A specific concern was raised that very targeted bans would not apply to equipment such as garage door openers or sensor lights (which could inadvertently cause interference, should they, for example, operate on frequencies allocated differently in other jurisdictions). Because such equipment is not

designed to have an adverse effect on radiocommunications, and not expressly intended to cause interference to radiocommunications, it is intended, and preferable, that such equipment be managed by the *Radiocommunications Equipment (General) Rules 2021*, and by sections 46 and 47 of the Act (operation, and possession for the purpose of operation, of an unlicensed radiocommunications device). If required, such equipment could also be managed by the imposition of an interim ban under section 167 of the Act, or by a compulsory recall of equipment under a recall notice made under section 183 of the Act.

Several submissions proposed that certain types of banned equipment be facilitated within the radiocommunications licencing system. However, generally speaking, equipment that is designed to cause interference to radiocommunications is not compatible with the ACMA's licensing framework developed under the Act.

There was a view that a ban on RLAN and RPAS jamming equipment would need to be careful not to inadvertently apply to equipment that might cause interference to equipment operating in shared spectrum under the Class Licence, but not actually designed to cause interference. The ACMA noted these views, and was satisfied that the permanent ban on RPAS and RLAN jamming equipment has been constructed so as not to apply to industrial, scientific, medical and domestic equipment that shares parts of the spectrum used by RLANs and RPAS.

### **Regulatory impact assessment**

The Office of Impact Analysis (**OIA**) has conducted a preliminary assessment of what were initially 3 separate instruments, each imposing a permanent ban on different equipment of a specified kind (PMTS jamming equipment, RLAN and RPAS jamming equipment, and RNSS jamming equipment) based on information provided by the ACMA. The OIA advised that a Regulatory Impact Statement was not required because the instruments were minor or machinery in nature (OIA reference numbers: OBPR22-02525, OBPR22-02526 and OBPR22-02527).

### **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 below has been prepared to meet that requirement.

### ***Overview of the instrument***

The instrument imposes a permanent ban on equipment of several kinds, each of which is designed to have an adverse effect on radiocommunications.

The specified kinds of equipment are PMTS jamming equipment, RPAS and RLAN jamming equipment, and RNSS jamming equipment.

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.

The specified equipment will also be a prohibited import for the purposes of the Customs Regulations.

The instrument also revokes the PMTS Jamming Devices Prohibition and the RNSS Jamming Devices Prohibition.

The purpose of the imposition of a ban on the specified equipment is intended to protect consumers, businesses, government agencies and radiocommunications licensees from the potential interference to radiocommunications that the equipment subject to the ban can cause.

### ***Human rights implications***

The ACMA has assessed whether the instrument 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 instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

### ***Conclusion***

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

## Notes to the *Radiocommunications (Jamming Equipment) Permanent Ban 2023*

### Section 1 Name

Section 1 provides for the instrument to be cited as the *Radiocommunications (Jamming Equipment) Permanent Ban 2023*.

### Section 2 Commencement

Section 2 provides for the instrument to commence at the start of the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at <http://www.legislation.gov.au>.

### Section 3 Authority

Section 3 provides that the instrument is made under subsection 172(1) and section 174 of the *Radiocommunications Act 1992*.

### Section 4 Revocation

Section 4 provides that the *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011* [F2011L00346] and the *Radiocommunications (Prohibited Device) (RNSS Jamming Devices) Declaration 2014* [F2014L01776] are revoked with effect on the day the instrument commences.

### Section 5 Interpretation

Section 5 defines key terms used in the instrument.

A number of other expressions used in the instrument are defined in the Act.

### Section 6 PMTS jamming equipment

Section 6 provides that certain types of equipment are PMTS jamming equipment, namely:

- equipment that is both designed to have an adverse effect on radiocommunications, and capable of operating on a frequency within a frequency band used for the supply of PMTS (whether or not it is capable of operating on another frequency); and
- equipment that is designed to block radio emissions between a base station used in the provision of a PMTS and a mobile station;

whether or not the equipment is designed to have other purposes or consequences.

Further, section 6 provides that two-way communication equipment is not PMTS jamming equipment.



## **Section 7 RLAN and RPAS jamming equipment**

Section 7 provides that a certain type of equipment is RLAN and RPAS jamming equipment, namely, equipment that is capable of operating on a frequency within an RLAN and RPAS frequency band (whether or not it is capable of operating on another frequency) and is designed to do one or more of the following:

- have an adverse effect on radiocommunications; or
- block radio emissions between 2 or more RLAN devices (whether or not the equipment is designed to have other purposes or consequences); or
- block radio emissions between 2 or more RPAS devices (whether or not the equipment is designed to have other purposes or consequences).

Section 7 further provides that if the principal purpose of equipment is an industrial, scientific, medical, or domestic application, or if the equipment is two-way communication equipment, the equipment is not RLAN and RPAS jamming equipment. Industrial, scientific, medical or domestic applications are the operations of devices to apply electromagnetic energy locally for purposes other than radiocommunications. For example, the operation of a microwave oven involves the local application of electromagnetic energy for cooking.

## **Section 8 RNSS jamming equipment**

Section 8 provides that certain types of equipment are RNSS jamming equipment, namely:

- equipment that is designed to have an adverse effect on radiocommunications, and capable of operating on a frequency within a frequency band specified in the spectrum plan, made under section 30 of the Act, for the RNSS, whether or not it is capable of operating on another frequency; and
- equipment that is designed to block radio emissions between an RNSS transmitter and an RNSS receiver;

whether or not it is designed to have other purposes or consequences.

Section 8 further provides that equipment that is designed to transmit information that can be used to determine both the location of an RNSS receiver and the local time at that location, when that location is determined, is not RNSS jamming equipment.

## **Section 9 References to other instruments**

Section 9 provides that, in the instrument, 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 or writing as in force or in existence from time to time.

## **Section 10 Permanent bans**

Section 10 provides that permanent bans are imposed on PMTS jamming equipment, on RLAN and RPAS jamming equipment, and on RNSS jamming equipment.

It further provides that each of those permanent bans comes into force on the day the instrument commences.