

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Radiocommunications Act 1992*

## ***Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020***

### **Authority**

The Australian Communications and Media Authority (ACMA) has made the *Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020* (**the instrument**) under subsection 27(2) of the *Radiocommunications Act 1992* (**the Act**).

Under that subsection, the ACMA may determine that acts or omissions by members of a class of persons performing a function or duty in relation to, among other things, the Australian Federal Police or the police force of a State or Territory, are exempt from certain provisions of the Act.

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

As the use of unmanned aircraft (UA) and unmanned aircraft systems (UAS), or ‘drones’, becomes increasingly widespread, there are growing concerns about malicious drone use and the risks that drones could pose to public safety and national security. The instrument provides an exemption for members of the Australian Federal Police (AFP) and of the various State and Territory police forces (each a **police force**) from particular provisions of the Act in relation to the use of devices designed to disrupt or disable UA and UAS (**counter-drone devices**), which might otherwise contravene the Act.

The purpose of the instrument is to facilitate the use of these devices by Australian police forces as a means to counter threats posed by UA and UAS to critical infrastructure, public safety and national security. The instrument will enable a member of a police force to deploy counter-drone devices to protect major events and to respond rapidly where counter-drone capability is required at short notice.

The Act requires radiocommunications devices to be licensed and to comply with all applicable standards, and provides for offences related to causing interference to radiocommunications. These requirements are broadly set out in Parts 3.1, 4.1 and 4.2 of the Act.

In particular, in Part 4.1, the operation and possession of specified radiocommunications devices may be prohibited under section 189 of the Act if the ACMA makes a declaration in relation to those devices under section 190.

Where the ACMA has declared a device to be prohibited under section 190 of the Act, the *Customs (Prohibited Imports) Regulations 1956* (**the Customs Regulations**), made under the *Customs Act 1901*, provide that the importation into Australia of such a device is prohibited, unless the conditions, restrictions or requirements for that device are met (subregulation 4(2)). The Customs Regulations specify that the device must only be imported by a person whose acts or omissions relating to the device are exempt from section 189 of the Act, under a determination made under subsection 27(2) of the Act (item 11 of Schedule 3 to the Customs Regulations).

The instrument exempts certain acts and omissions of **relevant persons** (a member of a police force) from the operation of Parts 3.1, 4.1 and 4.2 of the Act in relation to devices, used for certain police activities. It also exempts certain acts and omissions of **relevant contractors** (persons who have

entered into a contract with a police force to perform a specified testing or maintenance function or duty in relation to that police force) in relation to the devices.

In order to be exempt, the acts or omissions of relevant persons must be done, or occur:

- in the performance of the relevant person's functions and duties in relation to the promotion of safety, security or protection of persons or property; and
- during the period beginning immediately after the instrument commences (at the start of the day after it is registered on the Federal Register of Legislation) and ending immediately before the instrument is repealed two years after being registered (**the relevant period**); and
- in relation to specified activities for the procurement or supply, operation, testing or maintenance of, or training in the use of, a device; and
- if the act or omission involves operation of the device, in compliance with the requirement to keep a record, and the requirement to provide a copy of that record to the ACMA if the ACMA requests a copy of that record in writing.

The exemption applies to the acts or omissions of relevant contractors where the act is done or the omission occurs:

- in the performance of the relevant contractor's functions and duties; and
- during the relevant period; and
- in relation to the testing or maintenance of a device; and
- if the act or omission involves operation of the device, in compliance with the requirement to keep a record and to provide a copy of the record if requested by the ACMA.

In each case, the exemption applies only to devices that can be used in the frequency bands (**relevant frequency bands**) mentioned in:

- items 12 – 23A, 36 – 41, and 54 – 63 in Schedule 1 to the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015* (**the class licence**) as in force at the commencement of the instrument; or
- footnote number 150 in Part 4 of the *Australian Radiofrequency Spectrum Plan 2017* (**the spectrum plan**) as in force at the commencement of the instrument.

The relevant frequency bands include frequencies that are used for public mobile telecommunications services (**PMTS**). As such, the use of devices on these bands might contravene section 189 of the Act, because of the *Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2011*.

#### *Management of risk associated with the use of devices designed to disrupt or disable UA or UAS*

In the event that a counter-drone device is operated by a relevant person or relevant contractor, there is a risk that the device may affect a range of devices and services operating within the relevant frequency bands for the period the device is active. The relevant frequency bands include frequencies on which UA and UAS may potentially operate in Australia, and on which UA and UAS from overseas markets may be configured to operate. Devices and services operating in the relevant frequency bands include a wide range of commercial and consumer low power devices, such as Wi-Fi devices, industrial scientific and medical equipment (such as plastic welders, microwave ovens, and chemical analysis equipment not used for communications), and PMTS.

In considering whether to make the exemption, the ACMA weighed the benefits of police forces having access to devices that can effectively address the safety and security risks posed by UA and UAS, against the potential impact on other spectrum users.

Noting the low likelihood of counter-drone devices being activated, the ACMA formed the view that the public benefit associated with operating a device to deal with UA or UAS that poses a risk to public safety would outweigh the adverse effects and consequences associated with incidental interference of a short duration being caused to the devices and services operating in the relevant frequency bands.

The potential adverse effects associated with use of counter-drone devices are mitigated in a number of ways:

- When operating a device, members of a police force remain subject to all other laws and policies which apply to their conduct as police officers.
- The instrument limits the use, operation, possession or supply of such devices to relevant persons and relevant contractors. Someone can only be a relevant contractor if they enter into a contract with a police force for the testing or maintenance of a device. Further, the relevant contractor must only use, operate, possess or supply a device in relation to those testing or maintenance activities.
- The instrument provides that when a relevant person or a relevant contractor operates a device, a record must be kept of the date, time and location of the operation, and the purpose for which the device was operated.
- The ACMA can obtain a copy of such a record.

As noted, the exemption expires two years after it commences. The interim nature of the exemption will allow for review of expected developments in UA and UAS, and counter-drone technologies.

Additionally, as noted above, the exemption applies only in relation to the relevant frequency bands. Many devices operating in those bands, especially those operating under the class licence, do so under the ACMA's 'no protection policy' and are not afforded protection from interference. The ACMA's 'no protection policy' is consistent with the Radio Regulations of the International Telecommunication Union (ITU).

In its public consultation (see below), the ACMA noted that because people deploying radiocommunications services under the class licence should do so in regard to the 'no protection' policy, there is a good understanding that the relevant frequency bands should not be exclusively relied upon for safety and security-critical services. Devices operating under the class licence do not use the relevant radiofrequency bands on an exclusive basis, but rather share those bands with many other devices and services. Devices operating under the class licence are generally not expected to suffer interference; however, an individual device may experience interference arising from the particular circumstances of the device's operation.

The ACMA also considered that police forces have considerable strategic and operational experience in the management of risks associated with the deployment of counter-drone measures. The Queensland Police Service and the AFP have effectively deployed counter-drone devices at major events without incidents of interference to radiocommunications. Instruments which have authorised these activities under the Act are the *Radiocommunications (Commonwealth Games Anti-Drone Technology/RNSS Jamming Devices) Exemption Determination 2018*, the *Radiocommunications (Invictus Games Anti-Drone Technology/RNSS Jamming Devices) Exemption Determination 2018* and

the *Radiocommunications (Unmanned Aircraft and Unmanned Aircraft Systems) Exemption Determination 2019*.

Beyond the site of operation, the extent of any incidental interference caused by the operation of a counter-drone device to disable a UA or UAS would be dependent on a range of factors, including natural and man-made geography and structures, and the technical characteristics of services operating in frequency bands adjacent to the relevant frequency bands. Incidental interference beyond the site of operation is likely to be of short duration, and further limited by the direction in which the device is pointed.

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).

### **Documents incorporated by reference**

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

- the Act;
- the *Australian Federal Police Act 1979*;
- the *Police Act 1892* (WA);
- the *Police Act 1990* (NSW);
- the *Police Act 1998* (SA);
- the *Police Administration Act 1978* (NT);
- the *Police Service Act 2003* (TAS);
- the *Police Service Administration Act 1990* (QLD);
- the *Victorian Police Act 2013* (VIC).

Commonwealth legislation can be accessed, free of charge, on the Federal Register of Legislation (<http://www.legislation.gov.au>). The State and Territory legislation can be accessed, free of charge, from the relevant website:

- New South Wales: <http://www.legislation.nsw.gov.au>
- Northern Territory: <http://www.legislation.nt.gov.au>
- Queensland: <http://www.legislation.qld.gov.au>
- South Australia: <http://www.legislation.sa.gov.au>
- Tasmania: <http://www.legislation.tas.gov.au>
- Victoria: <http://www.legislation.vic.gov.au>
- Western Australia: <http://www.legislation.wa.gov.au>

The instrument incorporates by reference the following legislative instruments, as in force at the commencement of the instrument:

- the class licence; and
- The spectrum plan.

These 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 commencing on 18 May 2020 and concluding on 13 July 2020. A consultation paper and draft instrument were made available for public comment on the ACMA website.

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, Australian Broadcasting Corporation, the AFP, Australian Industry Group, Australian Mobile Telecommunications Association (AMTA), Australian Radio Communications Industry Association, CASA, Commercial Radio Australia, Consumer Electronics Suppliers Association, Corrective Services NSW, Department of Infrastructure, Transport, Regional Development and Communications, Department of Defence, Department of Home Affairs, Free TV Australia, NBN Co, New South Wales Crime Commission, Optus, Special Broadcasting Service, Telstra, TPG Telecom and Vodafone Hutchison Australia.

The ACMA received one confidential submission and eight public submissions in response to the consultation. Submissions were received from the AFP, Australian Maritime Safety Authority, AMTA, Australia-New Zealand Counter-Terrorism Committee, Corrective Services NSW, Department of Defence, DroneShield, Optus and Telstra. With the exception of the confidential submission, all were published on the ACMA website.

Stakeholders acknowledged the public safety and national security risks posed by malicious UA and UAS, and recognised the public interest and the operational needs of police in respect of using counter-drone devices to respond to safety and security threats posed by malicious UA and UAS.

Stakeholders generally supported the intent of the exemption. Some stakeholders noted the potential for licensed spectrum services in bands adjacent to the relevant frequency bands to be adversely affected when devices operating under the instrument are activated. The ACMA noted these concerns, but formed the view that, on balance, the activation of devices that can cause temporary interference to licensed radiocommunications services is a proportional response to scenarios where the risks of not intervening are likely to be unacceptable from a public safety or security stance.

One submission proposed the inclusion of the term 'RPAS' (remotely piloted aircraft system), to maintain consistency with definitions used by the aviation sector in the *Civil Aviation Safety Regulations 1998*. The ACMA considered, however, that as the instrument addresses acts or omissions relating to the use, operation, possession or supply of a radiocommunications device, it is appropriate to use the radiocommunications regulatory terminology adopted by the ITU, and that the terminology would not hinder practical application or interpretation of the instrument.

Some submissions indicated that the instrument could be improved by some additional accountability measures applying to persons operating under the instrument. The ACMA considered that it would be appropriate for police forces to be required to keep records of instances where devices are operated, and for the ACMA to have the ability to obtain copies of those records. This would allow the ACMA to monitor the operation of the instrument, and to correlate reported incidents of interference against use of devices and to respond accordingly.

## **Regulatory Impact Assessment**

The Office of Best Practice Regulation (**OPBR**) has conducted a preliminary assessment of the instrument based on information provided by the ACMA. The OPBR advised that a Regulatory Impact Statement was not required because the instrument was minor or machinery in nature (OBPR reference number 25210).

## **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 at **Attachment B** has been prepared to meet that requirement.

## **Notes to the *Radiocommunications (Police Forces — Disruption of Unmanned Aircraft) Exemption Determination 2020***

### **Section 1      Name**

Section 1 provides for the instrument to be cited as the *Radiocommunications (Police Forces — Disruption of Unmanned Aircraft) Exemption Determination 2020*.

### **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 27(2) of the *Radiocommunications Act 1992*.

### **Section 4      Repeal of this instrument**

Section 4 provides that the instrument will be repealed two years after it commences.

### **Section 5      Definitions**

Section 5 defines key terms used in the instrument.

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

### **Section 6      References to other instruments**

Section 6 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.

The definition of *relevant frequency bands* in section 5 demonstrates a contrary intention in relation to the incorporation of the two instruments mentioned in that definition.

### **Section 7      Exemption in relation to certain police activities**

Section 7 exempts the acts and omissions of relevant persons and relevant contractors from the operation of Parts 3.1, 4.1 and 4.2 of the Act, if those acts or omissions occur in particular circumstances.

In order for the acts or omissions of a relevant person to be exempt, those acts or omissions must be done, or occur, in the performance of the person's functions and duties in relation to the promotion of safety, security or protection of persons or property. Further, the act or omission must be in relation to the use, operation, possession, supply, maintenance of, or training in the operation of, a device to disrupt or disable UA or UAS. The act or omission must also be done or occur only within the

relevant frequency bands and during the relevant period. If the act or omission involves the operation of a device, sections 8 and 9 also apply.

In order for the acts or omissions of a relevant contractor to be exempt, those acts or omissions must be done, or occur, in the performance of that contractor's functions or duties (the relevant contractor will have a contract with a police force to perform a function or duty in relation to testing and maintenance of devices designed to disrupt or disable UA or UAS). Further, the act or omission must occur in relation to the testing or maintenance of such a device. The act or omission must also be done or occur only within the relevant frequency bands and during the relevant period. If the act or omission involves the operation of a device, sections 8 and 9 also apply.

## **Section 8      Device operation record**

Where a relevant person operates a device, the relevant person must keep a record of the date, time and location of the operation, and the purpose for which the device was operated.

Where a relevant contractor operates a device, a record must be kept of the date, time and location of the operation, and the purpose for which the device was operated. That record must be kept by a member of the police force with which that contractor has a contract.

## **Section 9      Provision of records to the ACMA**

If the ACMA gives a police force or a relevant person a written request for a copy of a record kept under section 8, a copy of the record must be given to the ACMA by a member of the police force with responsibility for management of police operations involving the device.



## **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 (Police Forces — Disruption of Unmanned Aircraft) Exemption Determination 2020***

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

The instrument provides an exemption to members of the Australian Federal Police, and the police forces of Australian States and Territories, and persons who have a contract with those police forces for the testing or maintenance of certain devices, from the operation of Parts 3.1, 4.1 and 4.2 of the Act. The purpose of the instrument is to allow police forces to obtain and use devices that are designed to disrupt or disable unmanned aircraft (UA) or unmanned aircraft systems (UAS), where there is an identified risk to public safety or national security. The instrument also authorises activities undertaken by police forces and persons having a contract with police forces that might need to occur over the two year period for which the instrument is in force—namely, supply, testing, training and maintenance activities.

There is a risk that a device operating in the relevant frequency bands under the instrument may affect a range of radiocommunications devices, including those used for public mobile telecommunications services (PMTS) or radio-navigation satellite services, those authorised under the *Radiocommunications (Low Interference Potential Devices) Class Licence 2015*, or those operating on frequencies identified in a certain part of the *Australian Radiofrequency Spectrum Plan 2017*, for the period the device is active.

#### ***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 engages the right to freedom of expression in Article 19 of the *International Covenant on Civil and Political Rights*. The operation of a device in the relevant frequency bands, and in the circumstances specified, may have the possible effect of disrupting for example, the Wi-Fi connection of public users, and the quality of PMTS.

The right to freedom of expression includes the right to seek, receive and impart information and ideas through any media of a person's choice, and it is subject to certain restrictions, including the protection of national security or public order.

In the event of a device being operated to disable UA or UAS, the use of the device is, as a matter of practice, limited to the flight path of the UA or UAS, and the device is only operated for the amount of time necessary to deal with the threat. Operation of the devices during testing, training and maintenance activities is intended be kept to a minimum, and practical steps can be taken by operators of the device to minimise or eliminate any adverse effects associated with incidental emissions from the devices.

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*Explanatory Statement to the Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020*

Use of the device in the relevant frequency bands may result in some limitation on the right to freedom of expression. However, it does so consistently with Article 19, in a manner that is reasonable and necessary. Any limitation would only be for a small amount of time and proportionate to activities directly related to, or expressly intended to support, the protection of public safety and national security.

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 could affect the right of freedom of expression; however, any effect is limited and proportional to the purpose of achieving public safety and protecting national security.

### ***Conclusion***

The instrument is compatible with human rights because any limitation on the right of freedom of expression is limited in a manner which is reasonable, necessary and proportionate to the purpose of protecting public safety and national security.