



Radiocommunications (Exemption) Determination 2021

The Australian Communications and Media Authority makes the following determination under subsection 302(2) of the *Radiocommunications Act 1992*.

Dated: 26 August 2021

Nerida O'Loughlin
[signed]
Member

Chris Jose
[signed]
Member/~~General Manager~~

Australian Communications and Media Authority

1 Name

This is the *Radiocommunications (Exemption) Determination 2021*.

2 Commencement

This instrument commences 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.

3 Repeal of this instrument

This instrument is repealed at the start of the day that is the third anniversary of the day it commences.

4 Authority

This instrument is made under subsection 302(2) of the *Radiocommunications Act 1992*.

5 Definitions

(1) In this instrument:

Act means the *Radiocommunications Act 1992*.

ARPANSA Standard means the *Radiation Protection Standard for Limiting Exposure to Radiofrequency Fields – 100 kHz to 300 GHz (2021)*, or any standard published as a replacement of that standard, by the Australian Radiation Protection and Nuclear Safety Agency.

Note: A copy of the ARPANSA Standard could, at the time of making this instrument, be obtained free of charge from the Australian Radiation Protection and Nuclear Safety Agency website at www.arpansa.gov.au.

banned device means a device that is an item of banned equipment.

banned equipment means equipment that is specified in a permanent ban.

dummy load: see subsection (2).

EIRP means equivalent isotropically radiated power.

maximum EIRP, in relation to a device at a particular time, means:

- (a) in subparagraph 12(3)(d)(iii) – the largest amount of EIRP that was radiated by the device in any direction at that time; and
- (b) otherwise – the largest amount of EIRP that may be radiated by the device in any direction at that time.

screened room means a room that prevents, or is designed to prevent, the entry or escape of radio emissions.

table means the table in section 7.

Note 1: A number of other expressions used in this instrument are defined in section 5, subsection 302(1) or another provision of the Act, including the following:

- (a) AAT;
- (b) ACMA;
- (c) Australia;

- (d) authorised defence supplier;
- (e) compliance provision;
- (f) Defence Department;
- (g) device;
- (h) equipment;
- (i) inspector;
- (j) interference;
- (k) legislative rules;
- (l) member of a civilian component of a visiting force;
- (m) member of a visiting force;
- (n) offer to supply;
- (o) operate;
- (p) permanent ban;
- (q) radiocommunication;
- (r) radiocommunications device;
- (s) radiocommunications transmitter;
- (t) radio emission;
- (u) supply;
- (v) transmitter.

Note 2: Other expressions used in this instrument may be defined in a determination made by the ACMA under subsection 64(1) of the *Australian Communications and Media Authority Act 2005*.

(2) A ***dummy load*** is a thing that:

- (a) is used, or designed to be used, as a substitute for another thing that is capable of radiating radio signals that are fed to it from a transmitter (***the original thing***); and
- (b) has impedance characteristics that are the same as the impedance characteristics of the original thing; and
- (c) is both:
 - (i) incapable of radio emission; and
 - (ii) designed to prevent radio emission occurring.

Example: A circuit that is connected to the antenna feed point of a radiocommunications transmitter to simulate the effects of a real antenna without allowing radio emissions caused by operation of the radiocommunications transmitter to travel further than the dummy antenna.

6 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.

7 Exempt acts

Subject to the conditions set out in sections 8 to 14, each act specified in an item of the following table is exempt from the compliance provisions specified in the corresponding item of the table.

Item	Column 1	Column 2
	Specified act	Specified compliance provisions
1	Possession of a banned device	(a) subsection 47(1) (b) subsection 47(3) (c) subsection 175(4) (d) subsection 176(4)
2	Operation of a banned device	(a) subsection 46(1) (b) subsection 46(3) (c) subsection 175(3) (d) subsection 176(3)
3	Supply of a banned device	(a) subsection 175(1) (b) subsection 176(1)
4	Offering to supply a banned device	(a) subsection 175(2) (b) subsection 176(2)

8 Condition of exemption – compliance with ARPANSA Standard

- (1) It is a condition of an exemption under item 1, 3 or 4 of the table, in relation to an act involving a banned device, that a person must only do the act if the electromagnetic energy that could be emitted by the device does not exceed the general public exposure limits specified in the ARPANSA Standard in a place that is accessible by the public.
- (2) It is a condition of an exemption under item 2 of the table, in relation to the operation of a banned device, or a group of banned devices, that a person must only operate the device, or the group of devices, if the electromagnetic energy that is emitted by the device, or by the group of devices, does not exceed the general public exposure limits specified in the ARPANSA Standard in a place that is accessible by the public.

9 Condition of exemption – person named in notifiable instrument

It is a condition of an exemption under any item of the table, in relation to an act involving a banned device, that a person must only do the act if:

- (a) the person is named in a notifiable instrument made under subclause 1(1) of Schedule 1; and
- (b) at the time the person does the act, the notifiable instrument is in force.

10 Condition of exemption – restriction on operation of banned device

- (1) It is a condition of an exemption under item 2 of the table, in relation to the operation of a banned device, that a person must only operate the device in accordance with at least one of subsections (2), (3) and (4).
- (2) A person operates a banned device in accordance with this subsection if all radio emissions from the device are dissipated into a dummy load.

- (3) A person operates a banned device in accordance with this subsection if:
 - (a) the device is operated in a screened room; and
 - (b) the signal level of the radio emissions caused by the device at each point of the external surface of the room is not greater than the mean level of ambient radiofrequency noise in the place the room is located.
- (4) A person operates a banned device in accordance with this subsection if:
 - (a) the device is operated in accordance with a written permission given by the ACMA to the person under subsection 193(1) of the Act; and
 - (b) at the time the device is operated, the written permission was registered as a notifiable instrument on the Federal Register of Legislation and had not been revoked.

11 Condition of exemption – restriction on supply of banned device

It is a condition of an exemption under item 3 of the table, in relation to the supply of a banned device, that a person must only supply the device to:

- (a) the Defence Force of Australia; or
- (b) the Defence Department; or
- (c) a member of the Defence Force, or an officer of the Defence Department, where the supply is related to the person's functions or duties mentioned in:
 - (i) subsection 24(1) of the Act; or
 - (ii) subsection 26(1) of the Act; or
- (d) a member of a visiting force, or a member of a civilian component of a visiting force, where the supply is related to the functions or duties mentioned in:
 - (i) subsection 24(1A) of the Act; or
 - (ii) subsection 26(1A) of the Act; or
- (e) an authorised defence supplier, where the supply is related to the functions or duties mentioned in:
 - (i) subsection 24(1B) of the Act; or
 - (ii) subsection 26(1B) of the Act; or
- (f) the Australian Secret Intelligence Service; or
- (g) the Australian Security Intelligence Organisation; or
- (h) the Australian Signals Directorate; or
- (i) a person who performs a function or duty mentioned in section 25 of the Act, where the supply is related to that function or duty; or
- (j) a person who performs a function or duty mentioned in subsection 27(1) of the Act, where:
 - (i) the supply is related to that function or duty; and
 - (ii) the ACMA has made a determination under subsection 27(2) of the Act in relation to a class of persons; and
 - (iii) the person is a member of that class; or
- (k) the ACMA; or
- (l) a person outside Australia; or
- (m) a person who is named in a notifiable instrument made under subclause 1(1) of Schedule 1, where, at the time of the supply, the notifiable instrument is in force.

12 Condition on exemption – record-keeping requirements

- (1) It is a condition of an exemption under item 1, 2 or 3 of the table, in relation to an act involving a banned device, that a person must only do the act if the person complies with the applicable record-keeping requirements set out in this section.
- (2) If the exemption relates to the possession of a banned device, the person must:
 - (a) at the time the person first came into possession of the device, create a written record of the following:
 - (i) the permanent ban that applies to the device;
 - (ii) the date the person first came into possession of the device;
 - (iii) the frequencies on which the device operates or is capable of operating;
 - (iv) if the device is a transmitter – the maximum power at which the device is capable of transmitting;
 - (v) the maximum EIRP of the device; and
 - (b) if the person destroys or disposes of the device – at the time the person destroys or disposes of the device, create a written record of:
 - (i) the date the device was destroyed or disposed of; and
 - (ii) the method by which the device was destroyed or disposed of.
- (3) If the exemption relates to the operation of a banned device, the person must:
 - (a) before the person operates the device, create a written record of the methods (if any) to be used by the person to prevent the operation of the device causing interference to radiocommunications; and
 - (b) if the person receives a complaint or report of interference in relation to the operation of the device – at the time the person receives the complaint or report, create a written record of the following:
 - (i) the identity (if known) of the person making the complaint or report;
 - (ii) the date the complaint or report was made;
 - (iii) the time and date (if known) of the interference;
 - (iv) the radiocommunications (if known) that were subject to the interference; and
 - (c) if the person takes any steps or other action to prevent or reduce the interference mentioned in paragraph (b) – at the time the person takes those steps or that action, create a written record of those steps or that action; and
 - (d) as soon as practicable after each time the person operates the device, create a written record of the following:
 - (i) the frequencies on which the device operated;
 - (ii) if the device is a transmitter – the maximum power at which the device transmitted;
 - (iii) the maximum EIRP of the device at the time it was operated.
- (4) If the exemption relates to the supply of a banned device, the person must, at the time of the supply, create a written record of the following:
 - (a) the identity of the person to whom the device was supplied;
 - (b) any information that verifies the identity of the person to whom the device was supplied;
 - (c) the date the device was supplied;
 - (d) the kind of device that was supplied;
 - (e) the frequencies on which the device operates or is capable of operating;
 - (f) if the device is a transmitter – the maximum power at which the device is capable of transmitting;

(g) the maximum EIRP of the device.

(5) For the purposes of subsection (4), if:

- (a) a person supplies more than one banned device to another person (*the recipient*) on the one day; and
- (b) those banned devices are identical at the time of the supply;

only one record needs to be created if the record also includes the number of banned devices supplied to the recipient, and the kind of banned devices that were supplied to the recipient, on that day.

13 Condition of exemption – retention of records

It is a condition of an exemption under item 1, 2 or 3 of the table that a person who is required to create a record under section 12 must retain the record for at least 5 years.

14 Condition of exemption – providing records to the ACMA or an inspector

- (1) It is a condition of an exemption under item 1, 2 or 3 of the table that a person who is required to create a record under section 12 must comply with subsection (2).
- (2) If the ACMA or an inspector requests, in writing, the person to provide a copy of the record created, the person must provide the copy to the ACMA or the inspector within such period, being not less than 2 days, as is specified in the request.

Schedule 1—Named persons

(section 9 and paragraph 11(m))

1 ACMA may make notifiable instrument

- (1) The ACMA may, by notifiable instrument, name a person for the purposes of section 9 and paragraph 11(m).
Note: See subsection 302(5) of the Act.
- (2) The ACMA must not make an instrument under subclause (1) naming a person unless the ACMA is satisfied that:
 - (a) either:
 - (i) the instrument is in the public interest; or
 - (ii) the instrument is consistent with legislative rules made for the purposes of paragraph 302(4)(b) of the Act; and
 - (b) naming the person would not lead to a significant risk of a contravention of a condition of an exemption under any item of the table.
- (3) The ACMA may make an instrument under subclause (1) regardless of whether a person has made an application under clause 3.
- (4) If, before making an instrument under subclause (1) naming a person, the ACMA has reason to believe that the person intends to supply, to a person outside Australia, a banned device that is included in the defence and strategic goods list, the ACMA, in deciding whether to make the instrument, may have regard to:
 - (a) whether the person has made an application for permission to export goods in accordance with regulation 13EB of the *Customs (Prohibited Exports) Regulations 1958*; and
 - (b) whether the Defence Minister has granted permission under regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*.
- (5) In this clause, **defence and strategic goods list** has the meaning given by subregulation 2(1) of the *Customs (Prohibited Exports) Regulations 1958*.

2 ACMA may revoke notifiable instrument

- (1) The ACMA may, by notifiable instrument, revoke an instrument made under subclause 1(1).
Note: See subsection 302(5) of the Act.
- (2) Without limiting subclause (1), the ACMA must, by notifiable instrument, revoke an instrument made under subclause 1(1) if the ACMA is satisfied that:
 - (a) the instrument is not, or has ceased to be, in the public interest; or
 - (b) the instrument is not, or has ceased to be, consistent with legislative rules made for the purposes of paragraph 302(4)(b) of the Act.
- (3) Without limiting subclause (2), the ACMA may be satisfied that the instrument is not, or has ceased to be, in the public interest, if the person named in the instrument has contravened a condition of an exemption under any item of the table, other than the condition in section 9.
Note: Sections 8 to 14 specify the conditions.

- (4) Before revoking an instrument made under subclause 1(1), the ACMA must:
 - (a) give the person named in the instrument a written notice:
 - (i) stating that the ACMA proposes to revoke the instrument and the reasons why the ACMA is proposing to revoke the instrument; and
 - (ii) inviting the person to make a submission to the ACMA as to why the ACMA should not revoke the instrument; and
 - (iii) specifying a period, of not less than 7 days, within which the submission may be made; and
 - (b) consider any submission made by the person within the period referred to in subparagraph (a)(iii).
- (5) Subclause (4) does not apply if the ACMA is satisfied that it would not be in the public interest to comply with that subclause.
- (6) If the ACMA decides to revoke an instrument made under subclause 1(1), the ACMA must, before the revocation takes effect, give the person named in the instrument a written notice of:
 - (a) the decision and the reasons for the decision; and
 - (b) the person's right to request a reconsideration of the decision under clause 4.

3 Application that notifiable instrument be made

- (1) A person may apply, in writing, for the ACMA to make an instrument under subclause 1(1) naming the person for the purposes of section 9 and paragraph 11(m).
- (2) An application under subclause (1) must be:
 - (a) in a form approved by the ACMA (if any); and
 - (b) made in a manner approved by the ACMA (if any).
- (3) If a person makes an application under subclause (1), the ACMA must decide whether to grant the application within 90 days after it is made or such longer period as agreed between the ACMA and the applicant.
- (4) The ACMA must, within 14 days after the decision under subclause (3) is made, give the applicant a written notice of:
 - (a) the decision; and
 - (b) if the decision is not to grant the application:
 - (i) the reasons for the decision; and
 - (ii) the applicant's right to request a reconsideration of the decision under clause 4.
- (5) If the decision is to grant the application, the ACMA must, within 14 days after the decision is made, make an instrument under subclause 1(1) naming the applicant for the purposes of section 9 and paragraph 11(m).

4 Reconsideration and external review of decisions

- (1) In this clause:
affected person, in relation to a relevant decision, means:
 - (a) in the case of a decision under subclause 2(1) to revoke an instrument made under subclause 1(1) – the person named in the instrument; and

- (b) in the case of a decision under subclause 3(3) not to grant an application under subclause 3(1) – the applicant.

reconsidered decision means a decision made under subclause (4).

relevant decision means:

- (a) a decision under subclause 2(1) to revoke an instrument made under subclause 1(1); or
 - (b) a decision under subclause 3(3) not to grant an application made under subclause 3(1).
- (2) An affected person in relation to a relevant decision may request the ACMA to reconsider the decision.
- (3) A request under subclause (2) must be:
- (a) made in writing; and
 - (b) set out the reasons for the request; and
 - (c) be given to the ACMA within 30 days after the affected person is notified of the relevant decision.
- (4) The ACMA must, within 90 days after the request is received, reconsider the relevant decision and:
- (a) affirm the decision; or
 - (b) make a fresh decision to the effect that the ACMA must, within 14 days after the decision is made, make an instrument under subclause 1(1) naming the affected person for the purposes of section 9 and paragraph 11(m).
- (5) The ACMA must, within 14 days after the reconsidered decision is made, give the affected person written notice of:
- (a) the reconsidered decision; and
 - (b) if the reconsidered decision affirms the relevant decision:
 - (i) the reasons for the reconsidered decision; and
 - (ii) the affected person's right to have the reconsidered decision reviewed under subclause (6).
- (6) If the reconsidered decision affirms the relevant decision, the affected person may apply to the AAT for review of the reconsidered decision.