

21 December 2010

Licence and Numbering Development Section
Australian Communications and Media Authority
Melbourne, Victoria 8010

By email: LANDS@acma.gov.au

Dear Sir/Madam

**Re: Proposed Radiocommunications (Prohibition of PMTS Jamming Devices)
Declaration
2010 Consultation paper, November 2010**

The Australian Mobile Telecommunications Association (AMTA) and Communications Alliance (the Associations) welcome the opportunity to provide comment on the Proposed Radiocommunications (Prohibition of PMTS Jamming Devices) Declaration 2010 Consultation Paper, November 2010 (Consultation paper).

The Associations are generally supportive of the ACMA's proposals as set out in the Consultation Paper. Comments are provided below against each of the four issues on which the ACMA specifically seeks comment.

Issue 1: The reasons for making a prohibition declaration under section 190 of the Act

The Associations support the retention of a prohibition on jamming devices for all the reasons set out on page 9 of the ACMA paper. As stated in our April 2010 Submission, the Associations believe that the Prohibition remains a relevant and necessary regulatory measure to prevent the general use of mobile phone jamming devices.

The Associations further support the ACMA listing the reasons for making the Public Mobile Telecommunications Service (PMTS) Jamming Devices Prohibition as a Schedule to the Prohibition. However, we believe that the ACMA should amend and extend the list to better acknowledge a number of reasons for the Prohibition that are not appropriately or explicitly stated in the proposed list, as described below:

a) Recognition of proportionality

The Schedule should acknowledge the fact that in most situations, there are alternative mechanisms to achieve the same result as that that would be achieved through use of a jamming device. For example, signage at cinemas to request that patrons turn their phones off or to silent mode is an effective and a more reasonable and proportional response to the threat of cinema goers disrupting others than installing jamming devices at the premises.

The Associations note that this concept was captured in the original Mobile Phone Jammer Prohibition and contend it should remain in the new Declaration. Although the concept is partly covered in the ACMA's draft "reason 5", the Associations suggest that the issue be more explicitly noted in a statement upfront to highlight that jamming is an extreme measure and should only be permitted in extreme circumstances, for example where an exemption has been granted under section 27 of the Act.

b) Recognition of the cost of interference

The Associations suggest that "reason 3" be extended to recognise that interference is costly; it is expensive for the licence holder and the ACMA to investigate interference issues. Such costs would inevitably be passed on to consumers. Eliminating one possible source of interference through the prohibition of jamming devices should benefit the community by reducing the cost involved in interference investigations.

c) More explicit recognition of the essential nature of mobile services and the public safety risk of not prohibiting mobile jamming devices

The ACMA's "reason 2" notes the increasing reliance of businesses and individuals on public telecommunications services for the delivery of both voice and data and notes public safety risks should a jamming device prevent access to emergency services. This is an important point and would benefit from being expanded to better recognise:

- the explosion of data usage and its increasingly central nature in the operations of many businesses. For example, for machine-to-machine or machine-to-person applications, remote monitoring, logistics tracking functions;
- the role of mobile services in emergency situations extends beyond individuals accessing emergency call services. With the introduction of the new emergency alert system, for example, it is important that information can be pushed out to individuals to alert them of possible danger. Similarly, current investigations into the provision of mobile location information for emergency service organisations are relevant; whether a "push" or "pull" technology is in use, the emergency service organisations will not be able to use this location information if a jamming device is in operation.

Issue 2: The draft PMTS Jamming Devices Prohibition

The Associations support the ACMA's draft Prohibition as presented, noting the further comments on its scope as presented below.

Issue 3: Whether Option 3 is the most suitable option for the scope of the PMTS Jamming Devices Prohibition

In their April 2010 submission the Associations argued that the Prohibition should be extended to include other frequency ranges used by other wireless access services (WAS). The ACMA does not favour this option in the Consultation Paper and instead suggests that the Prohibition refers to PMTS as the class of services for which jammers are prohibited.

The Associations recognise this as a simple and contained solution; it is sensible to refer to an existing category of services rather than attempt to redefine the scope through new definitions. In the interests of moving forward in a timely manner with a new Prohibition, the Associations therefore support the ACMA's Option 3.

The Associations contend, however, that the ACMA should consider the creation of a separate prohibition to deal with Wi-Fi and other technologies outside the definition of PMTS and consult on the issue separately. The Associations would be keen to provide input on such a review, noting:

- From an end-users perspective, a service that falls outside the definition of a PMTS and a service falling within the definition could appear to be identical. It is reasonable to expect that the same protection against illegal jamming activities is provided for both services. This is also consistent with Government's overarching policy aim of ensuring technology-neutral regulation.
- As an example of the above point, the proposed further consultation should consider the use or proposed use of 'white space' spectrum by different providers, and the implications in relation to jamming devices that would make use of 'white space' spectrum.

Issue 4: Matters that should be addressed in the guidelines to assist applications seeking an exemption under section 27 of the Act

As noted in the Associations' April 2010 submission, the Associations believe that the exemption criteria and process currently followed by the ACMA and those listed in section 6.1 of the January 2010 Discussion Paper¹ appear to be appropriate and useful. The Associations fully support the process being more transparent, with the ACMA providing written guidance about the ACMA's decision-making process for granting section 27 exemptions.

For example, in considering the overarching question, "*does the public benefit of making the exemption outweigh the potential risk?*" it would be useful to provide a breakdown of issues that may be taken into consideration under a number of sub-categories.

For example, the question "*what is the interference potential and to what extent can it be mitigated?*" could be broken down into technical mitigation options and procedural mitigation options. The latter might include:

- requiring that there are detailed and specific written operational procedures that must be followed by any individual operating under the exemption;
- specifying appropriate personnel training;
- specifying appropriate delegated authority for ordering the use of such a device (if applicable); etc.

Industry therefore requests that the ACMA require ongoing stakeholder consultation about both the high-level policy questions (whether or not an exemption is justified); and the operational detail of any exemption (how will it work; how often; where, etc). This visibility is critical in ensuring that the legitimate operations of spectrum holders can be taken into account wherever possible.

For example, for irregular but planned jamming events, operational guidelines might specify that impacted stakeholders must be provided notice of the event at least 3 months in

¹ Review of the Mobile Phone Jammer Prohibition, Public Discussion Paper, January 2010

advance. Mechanisms should also be required to ensure that planned operational events such as network upgrades or testing can be taken into account and avoided whenever possible. This might be achieved, for example, by requiring that the organisation with the jamming exemption put in place mechanisms to periodically request information from affected spectrum licence holders about any planned events, and to take these into account when planning.

The Associations also suggest that it would be useful to ensure mechanisms are in place to allow the ACMA to re-assess exemptions if necessary, to ensure that the ongoing use of exempt jamming devices continues to be justified and meet interference/public benefit criteria.

There should also be clear rules about the handling, storage and recording of jamming devices. The Associations suggest that any jamming device must be treated in an equivalent fashion to a firearm, that is, each device should be inspected at least annually by an approved enforcement officer to ensure that the device has not been sold, or disposed of in an unauthorised manner. Any disposal must be conducted in a way that renders the device unusable in Australia, unless it is being supplied to another party with an appropriate exemption.

On this point, AMTA notes that the arrangements for the proposed Lithgow trial are now reaching a mutually agreed and satisfactory outcome. The involvement of Carriers in discussions about trial parameter discussions, reviews, etc, increases the likelihood that major problems will be avoided through open communication, cooperation and good will between all relevant parties.

The Associations thank the ACMA for the opportunity to comment. Please do not hesitate to contact either, Lisa Brown, AMTA's new Policy Manager (lisa.brown@amta.org.au) or James Duck, Project Manager, Communications Alliance (j.duck@commsalliance.com.au) with any questions.

Yours sincerely

Peppi Wilson

Manager, Policy

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