

Radiocommunications (Field Trial by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2012

FRLI ID: F2012L02561

Portfolio: Broadband, Communications and the Digital Economy

Summary of committee view

2.5 The committee seeks further information in relation to:

- any testing or other research that may have been conducted to determine the level of risk that mobile telephone technology outside the Lithgow Correctional Centre may be affected by the field trial; and
- the current use of mobile phone technology by staff at the Lithgow Correctional Centre.

Overview

2.6 The purpose of this instrument is to facilitate the trial of public mobile telecommunications service (PMTS) jamming devices by Corrective Services NSW at the Lithgow Correctional Centre in New South Wales. PMTS jamming devices are designed to interfere with, or disrupt or disturb radiocommunications frequencies that are used to support the PMTS. The explanatory statement states that PMTS jamming devices have 'considerable radiocommunications interference potential'.

2.7 Members of the corrective services community have requested that the ACMA consider permitting the use of PMTS jamming devices in prisons. The explanatory statement states that:

The use of mobile phones by prison inmates is considered to be a serious problem by Corrective Services NSW. While it is an offence in NSW for an inmate to use or possess a mobile phone without reasonable excuse, detection of possession and use of mobile phones can be difficult. The use of mobile phones allows prisoners to continue to be involved in criminal activity outside the confines of the prison. This is a threat to the proper administration of correctional facilities and is contrary to the objectives of imprisonment.

2.8 It is noted in the explanatory statement that licenced telecommunications carriers (Telstra, Optus and Vodafone Hutchinson Australia) have an interest in minimising potential interference to radiocommunications outside the Lithgow Correctional Centre. As a result, the carriers and Corrective Services NSW have developed a 'Carrier Liaison Agreement'. This agreement contains operational arrangements and protocols agreed between Corrective Services NSW and the carriers about use of the PMTS jamming devices by Corrective Services NSW including:

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

- consultation about technical specifications of the PMTS jamming devices;
- monitoring of the interference of the PMTS jamming devices on mobile networks;
- management of consumer complaints;
- management by Corrective Services NSW of any emergencies where a PMTS jamming device is operational at the Lithgow Correctional Centre; and
- distribution by Corrective Services NSW of information to the public about the Lithgow Field Trial.

2.9 Subsection 6(3) of the instrument provides that ACMA may notify Corrective Services NSW that field trial participants are excluded from relying on the Determination. Examples of the kinds of situations in which the ACMA may issue such a notification include:

- a failure to implement or observe arrangements between Corrective Services NSW and industry about the conduct of the trial;
- threats to public safety resulting from the operation of the PMTS jamming devices;
- monitoring and reporting arrangements regarding the impact of the field trial on the operation of mobile telecommunications networks are deficient;
- harmful emissions occur outside the field trial zone; or
- public complaints are received about the operation of the field trial that require further investigation before the trial can continue.

2.10 The field trial at Lithgow Correctional Centre is to be conducted over a 12 month period and will commence on 1 July 2013 and cease on 30 June 2014.

Compatibility with human rights

2.11 The statement of compatibility states that the instrument does not engage any of the applicable rights or freedoms.

2.12 However, given that mobile telephone technology is such an important medium of communication, any possible interference with a person's ability to utilise mobile telephone technology has the potential to impact on the right to freedom of expression contained in article 19 of the International Covenant on Civil and Political Rights (ICCPR).

2.13 The explanatory memorandum explains that it is already an offence for prison inmates to use or possess a mobile phone without reasonable excuse, but that detection of possession and use of a mobile phone can be difficult. While it may be

that limiting prisoners' ability to use mobile telephone technology could be seen to be a reasonable, necessary and proportionate limitation on the right to freedom of expression, it is not clear from the statement of compatibility what impact the field trial may have on the use of mobile phones by staff at the Lithgow Correctional Centre or the general public who may live nearby. In this context, the committee notes that provision has been made for the 'management of consumer complaints'.

2.14 The committee seeks information from the Minister for Broadband, Communications and the Digital Economy in relation to:

- **whether any testing or other research has been conducted to determine the level of risk that mobile telephone technology outside the Lithgow Correctional Centre may be affected by the field trial (and the results of any testing); and**
- **whether mobile phone technology is currently used by staff at the Lithgow Correctional Centre (in a professional or personal capacity).**